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The Solicitors' Journal

VOL. LXXVII. **Saturday, October 7, 1933.** No. 40

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Current Topics.

Legal Changes.

ALTHOUGH the retirement of Lord MERRIVALE from the post of President of the Probate, Divorce and Admiralty Division was not altogether unexpected, nevertheless the definite announcement of his resignation was received with genuine regret by both branches of the profession, who had recognised those great qualities which he had shown in the discharge of the onerous duties falling to him. To the Bench he brought exceptional qualifications fitting him for judicial work. Not only while at the Bar had he a very large practice in the best class of litigation, he had also been a Recorder of an important borough; he had likewise served as Attorney-General to the Prince of Wales, and, later, had held that most responsible and perilous of posts of the past, namely, that of Chief Secretary for Ireland, at a most trying time. His elevation to the Bench as Lord Justice of Appeal, and, later, as President of the Probate, Divorce and Admiralty Division, was the well-merited promotion of one who had worthily served the State in many capacities. In now bidding him farewell as a judge we desire to accompany it with a sincere wish that many years may still be his in which to enjoy his well-earned leisure from toil. To him succeeds as President, Sir BOYD MERRIMAN, who has twice held the office of Solicitor-General with distinction, and who, like Lord MERRIVALE, has had judicial experience as a Recorder. To his new post he thus brings a good deal of experience, and with it the vigour of youth, as well as patience and an intense desire—as has been already observed during the few days he has been sitting in court—to get at the real merits of the disputes that have come before him. In the post of Solicitor-General he is followed by Mr. DONALD BRADLEY SOMERVELL, K.C., who is a very learned lawyer, particularly in commercial work, and who during the short time he has been a Member of the House of Commons has shown himself the possessor of those qualities which make for true success—a genuine desire to be helpful in his interventions in debate.

Scottish Changes.

IN Scotland, as here, the beginning of the winter term has been marked by various important changes in the legal sphere. For some time it has been an open secret that Lord ALNESS, the Lord Justice Clerk, intended to retire at the end of the vacation, and now that has become an accomplished fact. During his tenure of his high office, he proved himself an admirable judge, and a worthy successor in the line of those who combined splendid work on the Scottish Bench with a genuine love of letters, as was testified by his charming volume, "Looking Back," published a few years ago. As was expected, the post thus vacated has been filled by the promotion of the Lord Advocate, Mr. CRAIGIE AITCHISON, K.C., M.P., who, it will be remembered, achieved a great forensic success before becoming a law officer, by his handling of the appeal of OSCAR SLATER. A successful advocate does not necessarily become a successful judge, but in this instance there can be little doubt that one who has filled so satisfactorily the office of Lord Advocate will prove to be a distinguished Lord Justice Clerk. As was natural, the Solicitor-General for Scotland, Mr. W. G. NORMAND, K.C., has been promoted to the higher post of Lord Advocate, while he, as Solicitor-General, is succeeded by the appointment of Mr. DOUGLAS JAMIESON, K.C. Both these appointments were generally anticipated, and will, we are sure, be warmly approved by their professional brethren.

The Judicial Committee Centenary.

THE Judicial Committee of the Privy Council attains its hundredth birthday this month. It sat for the first time in 1833 under the Judicial Committee Act, 1833, as a permanent tribunal, appeals within its jurisdiction having previously been heard by judicial committees appointed from time to time by the Crown in Council. By virtue of the Judicial Committee Amendment Act, 1895, the Appellate Jurisdiction Act, 1908, and the Appellate Jurisdiction Act, 1928, an unlimited number of Judges from the Dominions may now be sworn of the Council and appointed to membership of the Committee. Under the Appellate Jurisdiction Act, 1929, His Majesty may by letters patent appoint any Privy Councillor to membership of the Committee, provided that he is or has been a judge of a court which is a High Court within the meaning of cl. 24 of s. 3 of an Act of the Indian Legislature known as the General Clauses Act, 1897, or is a barrister, advocate or vakil of not less than fourteen years' standing who practises or has practised in British India. The Committee now consists of the Lord President of the Council and former Presidents, the six Lords of Appeal in Ordinary, all members of the Privy Council who hold or have held high judicial office in the United Kingdom, certain judges of the self-governing dominions and colonies and two other members of the Privy Council if appointed by the Crown under the Judicial Committee Act, s. 1. Apart from its limited original jurisdiction under the Copyright Act, 1911, it hears appeals in ecclesiastical cases under the Church Discipline Act, 1840, the Clergy Discipline Act, 1892, the Public Worship Regulation Act, 1874, and the Union of Benefices Measure, 1923, in prize cases from the Admiralty Division of the High Court, and in maritime cases from the Admiralty Court of the Cinque Ports and colonial courts of Admiralty and Vice-Admiralty Courts. One of the earliest statutes with regard to

its imperial jurisdiction was an Order in Council of 1696 "that all appeals from any of the plantations be heard as formerly by the Committee, who are to report the matters as heard by them and with their opinion thereon to the King in Council. Now, besides being the Supreme Court of Appeal for India and the Dominions, it is also the final court of appeal for places where by treaty, usage, mandate of the League of Nations or other lawful means His Majesty has power and jurisdiction, and where courts have been established under the Foreign Jurisdiction Act, 1890. A glance at the Law Reports for 1932 and 1933 discloses appeals to the Judicial Committee from Canada, Newfoundland, Palestine, Ceylon, Trinidad, Australia, New Zealand, India, Hong Kong and the Straits Settlement. Thus, after a hundred years of wide and varied activity as a permanent court, the Judicial Committee, with its present jurisdiction over 450,000,000 souls, is one of the strongest links that bind together the distant and widely-diversified parts of the Empire.

Old Roads turned into New Streets.

Local authorities, and particularly county councils, are gradually realising their powers under ss. 27 to 33 of the Public Health Act, 1925, and proceeding to exercise them. Under those sections, where a local authority finds that an existing highway or any part of it will be converted into a new street by building operations, it may declare the highway or such portion as is specified in the order to be a new street for the purpose of the application of their bye-laws, or any provision in a local Act with respect to the width of new streets. The bye-laws are those of the district council, but the County Council applies and enforces them. The effect of this is to apply the principle of the Private Street Works Act, 1892, to an existing highway, and to require the owner of land adjoining the highway who develops it by building a row of houses along it, and thereby makes it a "street," to contribute to the cost of the necessary widening and improvement. Existing bye-laws, however, may be superseded by local schemes made under the Town and Country Planning Act, 1932, and there appears to be some danger of overlapping in these matters. The Devon County Council has put into operation in many districts its powers under the Act with regard to building lines and improvements, and in the Plymouth district alone has declared about 100 miles of roads to be new streets. But in other districts similar action has met with considerable opposition and a threat to appeal to Quarter Sessions. An action arising from an order made under the sections came into the Chancery Division from Somerset last term, and was decided against the owner without raising any disputed question of law. The county council putting in force the bye-laws of the district council, where they exist, can purchase any land required for widening, setting off the value of the benefits to the owner, and can then charge the adjoining owner with the cost of making up the widened roadway, except any portion thereof which was formerly repairable by the inhabitants at large. According to a member of the Devon County Council, writing in *The Western Morning News*, the wording of the Act (and possibly also of the bye-laws applicable) gives rise to various difficulties, particularly with regard to the apportionment of costs between ratepayer and building owner, and we may look forward to a test case in the courts to settle them. The exercise of these powers is certainly likely to discourage owners from building houses adjoining existing highways where the costs of widening are likely to be increased by excavation of slopes.

The King's Peace—and Women.

That every person is bound to assist in suppressing breaches of the peace is a fact not so clear to the minds of the people as the law presumes it to be. It is nevertheless an important public duty giving rise to penalties in the event of its non-observance. See *Miller* v. *Knox*, 6 Scott 1 and *Rex* v. *Brown*, 1841, C. & Mar. 314. But in *Rex* v. *Brown*, *supra*, an exception is suggested by the judgment deciding that the defendant refused his assistance "without any physical impossibility or lawful excuse," which leads us to consider on what occasions such excuses might avail. The obligation to assist in keeping the peace received statutory force in 13 Hen. IV, c. 7, which empowered the sheriff to maintain order with "all the power of the county." Now this *posse comitatus* has been interpreted by the old writers as excluding "women, ecclesiastical persons and such as be decrepit or labor of an infirmity." See "Hawkins' Pleas of the Crown," p. 520, and "Blackstone Commentaries," Vol. IV, p. 139. So far as appears, the Act of Hen. IV gave statutory force to an existent principle of law, and therefore the assumption is that the common law duty did not operate in any wider sphere, or to speak precisely, did not involve women. But the question now remains, are women still exempt from this obligation to assist the forces of law? Were they excluded by reason of a physical ineffectiveness which might still be attributed to them, or were they excluded because to feudal eyes they were not the "man-power" of the country, nor amenable to the fine by which men were constrained to perform their part? This second ground has been affected by the Sex Disqualification (Removal) Act of 1919, which reads: "A person shall not be disqualified by sex or marriage from the exercise of any public function . . ." But although the Local Government Act, 1929, interprets (s. 134) "function" as including both powers and duties, it is still arguable with such strong support from past authorities that women are not subject to this particular duty.

Towns and Cities.

Taken in conjunction, two incidents which occurred at the banquet given at the recent Annual Provincial Meeting of The Law Society may well be without precedent. A layman, having taken a lawyer to task on a question of law, went on to utter a statement of fact on which another lawyer joined issue with him. The matters in issue were the legal and physical positions of Oxford, referred to by Sir Dennis Herbert as a "town." Whereupon its Mayor reminded those present that it was a city, and further asserted that it was set upon a hill; an allegation which drew from Sir Claud Schuster, K.C., the observation that it used to be at the bottom of a cup. We leave the question of fact to our esteemed contemporary, the *Geographical Journal*, and remark only that it must be decided, like all questions of fact, by reference to surrounding circumstances. But on the question of what constitutes a city, there is much authority in law. Coke-upon-Littleton, in Pt. I, Ch. 10, s. 164, while dealing with "Tenure in Burgage," considers city a sub-species of town, which is a species of burgh. He also mentions a passage in the *Mirror*: "*Civitas et urbs in hoc differunt, quod incolæ dicuntur civitas, urbs vero complectitur ædificia*," which puts the matter on quite a different plane. His own view, however, appears to be: "Every borough incorporate, that had a bishop within time of memory, is a citie, albeit the bishopricke be dissolved," and mentions Cambridge as an instance of the latter class. This proposition is repeated in "Comyn's Digest," title "Burrough"—after which one is no doubt left wondering what the practical importance of the alleged distinction may be. For present-day purposes, the answer is to be found in the Municipal Corporations Act, and in an 1846 case, reported in 2 Phillips, p. 3, where we learn that the then Attorney-General had filed an information against the Mayor, Aldermen and Burgesses of the City of Worcester, who had, in a moment of aberration, answered under that style but subsequently applied to the Vice-Chancellor for leave to amend the answer by substituting "citizens" for "burgesses." Leave was refused, but granted, on appeal, by the Lord Chancellor after reference to the Act of 1872. After this we think we can say that if any of our readers issue a writ against the Mayor, Aldermen and *Burgesses* of Oxford he will get the trouble he deserves.

Sequestration.

[CONTRIBUTED.]

IN view of the adoption by the Church Assembly at its last summer session of the Benefices (Sequestration) Measure, and the approaching submission of that measure to Parliament as a necessary preliminary to the Royal Assent, it may not be out of place to inquire what "sequestration" has hitherto involved and what is likely to result from the passing of this new measure by the Church Assembly.

The long history of sequestration may be traced for our present purposes back to the year 1832, when the Ecclesiastical Courts (Contempt) Act (2 & 3 Will. IV. c. 93) was passed to deal with persons found to be "contumacious" in regard to non-payment of church rates and other "contempts" of the Courts Ecclesiastical. Originally the procedure to that end was for the court to pronounce a sentence of excommunication upon receiving a report of which by *significavit* the Court of Chancery issued a writ *de contumace capiendo*. But, by the Ecclesiastical Courts Act, 1813 (53 Geo. III, c. 127), excommunication was replaced by sentence pronouncing the party to be contumacious and thereupon the same writ *de contumace capiendo* issued out of the Chancery. Under this writ the defendant was taken into custody by the sheriff and detained until he purged his contempt. Later on came the "Contempt" Act of 1832, under which the Court of Chancery was authorised to cause process of sequestration to issue against the "real and personal estate, goods, chattels and effects" of the party who had been found to be contumacious.

The next landmark in the history of this procedure appears in the Sequestration Act, 1841, which gave power to sequestrators of ecclesiastical benefices to sue in their own names for tithes, rent, etc., due to the incumbent. Prior to the passing of this Act, it was held (see *Harding* v. *Hall* (1842), 10 M. & W. 42) that a sequestrator appointed by a bishop was merely the bailiff or agent of the bishop and as such had no interest in the profits of the benefice sufficient to enable him to maintain an action. It is of interest to note in passing that, by s. 2 of this statute, the sequestrator is reminded of his obligations under the law respecting the application of the moneys which come into his hands and of the security required of him for his duly accounting for the same.

We pass on to the Sequestration Act, 1871. Under this statute where a sequestration issues, and remains in force for a period of six months under a judgment recovered against the incumbent of a benefice, or under his bankruptcy, authority is given to the bishop of the diocese to appoint and licence a curate or curates, with such stipend as the bishop thinks fit, to perform the services of the church of the benefice. Every stipend so assigned is to be paid by the sequestrator out of the moneys coming into his hands in priority of all sums payable by virtue of the judgment or the bankruptcy. This priority reaches back to sequestrations under the Pluralities Act, 1838, which are to have priority except as regards sequestrations issued under the Clergy Residences Repair Act, 1776—a statute passed to promote the residence of the parochial clergy. Under that statute residence was enforced by monition with the alternative of sequestration.

According to established authority (which for some reason at present unexplained, seems in danger of being allowed to fall into abeyance) the churchwardens are the proper officers to be placed in charge of a benefice as sequestrators. Prideau, who in his day was an outstanding authority on matters of this kind and whose work on the office and duties of churchwardens is still a standard work of reference, is quite emphatic on the subject—

> "Another branch of the churchwardens' office is to have the sequestration and care of the benefice during its vacancy, *whether the avoidance happen by death or otherwise*, and, therefore, as soon as there shall be any such avoidance, the churchwardens are to apply to the chancellor of the diocese for the sequestration, and having taken out an instrument for it under the seal of the office, are thenceforth to take the whole benefice under their care and are to manage all the profits and expenses of it . . . with the same fidelity as if they were their own . . . and principally, they are to take care that during the vacancy the church be well and duly served by such curate as the bishop shall approve, whom they are to pay out of the profits of the benefice . . . And this trust in them is to last till it be superseded by the institution of a new minister, unless in the interim the ordinary shall see just cause to recall the said sequestration and grant it to others. And as the ordinary, on any such just cause, hath power to grant the sequestration to others, so also hath he in the first issuing out of it, and may then, if he see reason for it, put the said trust into the hands of other men that are willing to accept it. But *the churchwardens are the proper officers for this business*, who are *bound by virtue of their office to take it upon them whensoever enjoined*, and therefore, should they be backward to take out the sequestration, or unwilling to meddle therewith, the ordinary may, by this citation, cite them before him, and command them under the penalty of contumacy, to take this charge upon them.
>
> "Sometimes livings are sequestered on other occasions than on vacancies. For, on suspension there must be a sequestration for the serving of the cure, and in case of dilapidations, either in the chancel or the minister's house, a sequestration is often necessary for repairing them, and sometimes a sequestration is commanded by the Queen's writ for the payment of the minister's debt; in all which cases the churchwardens are necessarily obliged to be the sequestrators, unless the ordinary find others willing to undertake it, whom he judgeth proper to be entrusted with it, in all which sequestrations there must be the like management, and the like account given as above mentioned."

According to the same authority, the sequestrators are to account to the incumbent "as faithful stewards" for their care of the benefice during the sequestration; and this may be enforced if necessary by legal action "so that they give a true and faithful account of their trust." As the churchwardens are the chosen representatives of the laity of the parish and, by virtue of their office, should be closely familiar with the circumstances and needs of the benefice, it is reasonable to suppose that they would prove themselves trustees of the very best type. It is to be noted that the statutes dealing with this aspect of the matter make no provision for the payment of sequestrators for their services, the whole idea underlying sequestration being the conservation, on the most economical lines, of the revenues of the benefice affected. Moreover, the office of churchwarden is purely honorary and must, of necessity, be free from taint of pecuniary self-interest.

In these latter days the subject came up in the Benefices (Ecclesiastical Duties) Measure, 1926, s. 10 of which provides, *inter alia*, that where an incumbent is inhibited by the bishop under this statute, the bishop—

> "shall sequester the profits of the benefice and such profits shall be applied under such sequestration for the purposes for which the same shall, for the time being, be applicable under the provisions of this Measure or otherwise."

A question arises here as to what are the purposes for which the profits are applicable. In the first place, it is provided that if the incumbent has been found guilty of the offence of inadequate performance of his duties *by being negligent*, the bishop may inhibit him and appoint a curate or curates to perform his duties. It is from this inhibition that the sequestration follows which is referred to above. The statute then goes on to prescribe the stipend to be paid to the curate appointed to act during the sequestration. This may be a sum not exceeding three-quarters of the net annual value of the benefice; but if the inhibited incumbent continues to live in the parish the bishop is given power to direct that the curate shall have the *whole* of the net annual value

(sect. 14 (3)). In other words the bishop might, if he chose, direct the sequestrators (whose duty it will be to meet all outgoings as well as to receive all incomings of the benefice) to pay over to the curate-substitute the whole of what remains. Such an extreme course would hardly be in accordance with elementary Christian principles. It would mean turning an incumbent out of his living into the street to starve merely because he has been negligent in the discharge of his duties and has (possibly for very good reasons) continued to live in the parish where he is inhibited from conducting the services in his church. (For let it be noted that if the inhibited incumbent has been found guilty of any grave offence he would be dealt with, not by inhibition—which is tantamount to suspension—but by deprivation and "unfrocking.") So in practice the bishop would be expected to provide for the curate-substitute out of the nett income of the benefice a reasonable stipend as remuneration for his services, taking into account the arrangements made for his residence in the parsonage house or otherwise. Beyond that the income of the benefice must remain untouched and the sequestrators are bound to account for the balance of income in due course to the inhibited incumbent who, despite the inhibition and temporary sequestration is still *de facto* incumbent. To this rule there is, however, one exception—that is to say, the payment of any costs awarded against the inhibited incumbent (as to which see R.S.C., Orders 42 and 43).

Now there is one section of the Benefices (Ecclesiastical Duties) Measure, 1926, to which for reasons which will presently appear, attention needs to be called. That section (12) reads as follows:—

> "In any case where an inhibition under this Measure continues undetermined for a period of five years from the date of the issuing thereof, the benefice thereby affected shall, at the expiration of that period, become void as if the inhibited incumbent were then dead."

The effect of this section is to place in the hands of the bishop a very powerful punitive weapon. Bearing in mind that the object of this measure was not to *deprive* an incumbent of his benefice, but merely to *suspend* him from the performance of his duties until such time as he had purged his offence and could properly be trusted to resume his duties, it is obvious that this section can and should only be used upon very exceptional occasions, and for very grave reasons.

The duty of the sequestrators—whether acting in a vacancy caused by the death of an incumbent or in a quasi-vacancy due to inhibition involving sequestration—for their position is the same in both cases—is to conserve the finances of the benefice and after payment out of what they are legally bound to pay to hand over the residue to the incumbent. Sequestration is a seizure of property not for purposes of confiscation but as security for the payment of legal liabilities: and when those liabilities have been met, the balance is the undoubted property of the inhibited incumbent. Sequestrators are, in fact, temporary administrators of the incumbent's finances so far as these are derived from the benefice. Should the inhibition continue undetermined for the extreme period of five years, then deprivation ensues, though under the more euphemistic term of the benefice "becoming void." Even then, if words mean anything, s. 12 provides that the position is to be "as if the inhibited incumbent were then dead." If he were dead, what was due to him would be handed over to his personal representatives as part of his estate: equally so, if he be living but considered "dead," the sequestrators must hand over to him what remains in their possession after they have met the liabilities they are bound to meet as sequestrators of the benefice.

It will be seen, therefore, that there is a real danger of grave injustice being done under the Ecclesiastical Duties Measure, 1926, unless the true nature and objects of sequestration, no less than its responsibilities, be clearly appreciated; and here we turn to this new Benefices (Sequestration) Measure in vain to find any provision for ensuring justice and equity for the inhibited. On the contrary we find important enlargements of episcopal autocracy. The sequestrators—unlike trustees—are placed more closely than ever under the control of the bishop. It is true that according to the old ecclesiastical law they are the bishop's "bailiffs." But bailiffs, for whomsoever they act, are circumscribed in their conduct by law and are not free to do whatever the party from whom they act may see fit to direct them to do. They are, in fact, trustees as well as bailiffs.

Now this new Sequestration Measure, which professes to "confer certain powers upon sequestrators," in effect does nothing of the kind. It prescribes certain powers which the sequestrators shall exercise—

> "in such manner and to such extent *as the bishop shall direct* in any case *where he shall think it desirable to give directions*."

These "directions" go to the length of authorising the letting of the rectory or vicarage with its garden and land *for the full period of five years*; and so the bishop need not wait to see whether the man he has inhibited repents of his negligence and becomes fit to be allowed to resume his duties. He may in this way deprive him forthwith!

Another serious inroad upon the age-long practice of sequestration is to be seen in the provision that the sequestrators (by direction of the bishop) may borrow money and pay interest upon it and may make provision for—

> "remuneration payable in respect of any professional assistance required by them in connection with their duties."

Under such a provision as this, bureaucracy (which unfortunately already shows manifest signs of encroaching too far into ecclesiastical administration) might be encouraged to develop tendencies of the most undesirable sort. The sure and substantial safeguard against any development of vested interests out of which the *entourage* of a bishop might seek to obtain for themselves and their friends what have been euphemistically termed "pickings" in respect of professional services is to hold fast to the time-honoured principles upon which sequestration has hitherto been conducted. If this is to be ensured, there can be no doubt that the Sequestration Measure of 1933 will require very close consideration at the hands of the Legislative Committee of the Church Assembly—or if that stage has already been passed—at the hands of Parliament when the Measure comes up for approval before submission to His Majesty for the Royal Assent.

Hire Purchase.

RESTITUTION OF STOLEN GOODS.

The bailee of goods which are the subject of a hire-purchase agreement, though he was not liable to punishment at common law, since he had lawful possession of the goods, is now, of course, guilty of larceny if he fraudulently converts the goods to his own use or the use of any one other than the owner (Larceny Act, 1916, s. 1 (1)). So also is the person guilty of an offence who receives the hired goods from the bailee knowing them to have been stolen (s. 33 (1) of the 1916 Act). So also is the bailee guilty who pawns the hired goods (Pawnbrokers Act, 1872, s. 33).

The question, however, which is usually of the most interest to the owner of the hired goods is how to recover them. Section 45 of the Larceny Act, 1916, provides that upon the conviction of the thief in all cases of conversion except obtaining goods "by fraud or other wrongful means not amounting to stealing" the property in the goods shall be restored to the owner or his representative, and the court convicting may make a restitution order. This order can only be made against the person actually in possession of the goods at the time of the conviction. The exception as to

fraud was first made by the Sale of Goods Act, 1893, s. 24 (2), in order to get over the Larceny Act, 1861, s. 100, which recognised no exception.

There are many cases where the hire-purchaser in breach of the agreement sells or pledges the goods to an innocent person. In these cases it is also necessary to consider the effect of the Factors Act, 1889, s. 9, reproduced by the Sale of Goods Act, 1893, s. 25 (2). That sub-section enacts :—

> " Where a person, having bought or agreed to buy goods, obtains, with the consent of the seller, possession of the goods or the documents of title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for him, of the goods or documents of title, under any sale, pledge, or other disposition thereof, to any person receiving the same in good faith and without notice of any lien or other right of the original seller in respect of the goods, shall have the same effect as if the person making the delivery or transfer were a mercantile agent in possession of the goods or documents of title with the consent of the owner."

It is therefore clear that the owner of goods who desires to re-take them must consider whether the hire-purchase agreement amounts to an agreement to sell and buy or not. If it does, then the sub-section will apply to protect the innocent holder of the goods. If it does not, then the property in the goods still remains in the original owner and he can recover the goods under s. 45 of the Larceny Act and s. 24 (1) of the Sale of Goods Act, both sections being in very similar terms. He can also recover the goods by action (*Scattergood* v. *Sylvester*, 15 Q.B. 506).

Most modern hire-purchase agreements are framed in accordance with the principles laid down in *Helby* v. *Matthews* [1895] A.C. 471, and are accordingly not agreements to sell but merely hirings with an option to purchase on the payment of the last instalment, or, in many cases, of a further nominal sum. *Helby* v. *Matthews*, *supra*, is well-known as the leading case on the true nature of hire-purchase transactions. The hire-purchaser there had the right to terminate the hiring at any time by delivering up the goods, which were not to become his property until the last instalment was paid. The House of Lords were unanimous in the view that there was no binding agreement to buy but a mere option to buy, and that accordingly s. 9 of the Factors Act did not apply. The House pointed out how different was the agreement in *Lee* v. *Butler* [1893] 2 Q.B. 318, where the Factors Act was rightly held to apply. In that case there was an agreement to pay the price of the goods in the instalments, but there was no provision allowing the hire-purchaser to return the goods and terminate the hiring. Accordingly the obligation to make the two payments was binding as soon as the agreement was made, and there was a clear agreement to sell. In *Payne* v. *Wilson* [1895] Q.B. 653, the agreement was identical with that in *Helby* v. *Matthews*, *supra*, and was held to be an agreement to buy. But on appeal [1895] 2 Q.B. 537, the appeal was not contested, *Helby* v. *Matthews*, *supra*, having been decided in the meantime. *Payne* v. *Wilson*, *supra*, is, however, still an authority for saying that if the so-called hire-purchase agreement really amounts to an agreement to sell and buy then the Factors Act applies and the innocent purchaser or pledgee is protected. It will clearly be seen, therefore, how important is the form of the agreement when the question of recovering the goods arises, as it often must.

RESIGNATION OF L.C.C. SOLICITOR.

It was officially announced from the County Hall on Thursday, 28th September, that Mr. Stanley Augustus Richard Preston-Hillary, the solicitor to the London County Council, has resigned and that his resignation has been accepted.

Mr. S. A. R. Preston-Hillary, who was admitted a solicitor in 1901, was appointed solicitor to the London County Council in 1929.

Company Law and Practice.

What is Fraud?

" I will begin by stating that s. 275 of the Companies Act, 1929, under which relief is claimed, is a very remarkable section and one which is by no means easy to construe." Thus Maugham, J., in *Re Patrick & Lyon, Ltd.* [1933] Ch. 786. This remarkable section has come under observation in this column before, in reference to the two cases of *Re William C. Leitch Brothers, Ltd.*, No. 1 and No. 2 [1932] 2 Ch. 71, and [1933] Ch. 261, respectively, but *Re Patrick & Lyon, Ltd.*, looks at it from a somewhat different angle, and also sheds some light on another section of the same Act.

This case was an application by a creditor of the company, to which the liquidator was a respondent, asking, *inter alia*, that the first respondent should be declared to be personally responsible without any limitation of liability for all the debts and other liabilities of the company or for such part thereof as the court might direct, on the ground that he had been a party to carrying on the company's business with intent to defraud its creditors, and for ancillary relief. The company was incorporated in June, 1929, and on the 22nd August, 1932, a resolution for voluntary winding up was passed, pursuant to notices sent out on the 13th August, 1932, convening meetings for voluntary winding up and the appointment of a liquidator. The winding up was a creditors' voluntary winding up.

From the date of incorporation down to liquidation the company never made a trading profit. The first respondent was a director from incorporation down to the 22nd July, 1932; and, in January, 1932, he and his wife were owed sums of money by the company, part of which, at any rate, was in respect of directors' fees, and it was arranged that he should lend £400 to the company, which should then discharge the sums owing to him and his wife. This was done, and on the 12th February, 1932, four debentures for £100 each, containing a floating charge on the company's assets, were issued to the first respondent. Six months and one day after the date of these debentures, namely, on the 13th August, 1932, the first respondent appointed a receiver under the debentures, who was in fact the same person who was subsequently appointed liquidator of the company.

In the face of these dates, it is not difficult to see what complaint might be made, and the fact that just over six months had elapsed before notices were sent out convening a meeting for the purpose of passing a resolution for voluntary liquidation and before a receiver was appointed under the debentures, containing as they did, a floating charge, might be significant. Let us just refresh our memories as to the provisions of s. 266 : " Where a company is being wound up, a floating charge on the undertaking or property of the company created within six months of the commencement of the winding up shall, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid, except to the amount of any cash paid to the company at the time of or subsequently to the creation of, and in consideration for, the charge, together with interest on that amount at the rate of 5 per cent. per annum."

It was alleged by the applicants that after the 12th February, 1932, the company's life was continued, not genuinely for trading purposes, but solely in order to validate the floating charge contained in the first respondent's four debentures, and that he was a party to its continuance for that purpose. For the first respondent it was argued that the applicant must first of all prove that the debentures required validating : i.e., either that the company was insolvent within the meaning of s. 266 when the debentures were issued, or alternatively that they were not issued for cash. Maugham, J., held that the debentures might well have been attacked had they been issued within six months of the winding up;

and this suggests that he did not consider that the onus was on the applicants in the present case, though he points out that the onus of proving solvency lies on a debenture-holder endeavouring to support his floating charge. Be that as it may, he does make observations on the meaning of s. 266 which are useful.

It was apparently argued that "solvent" in that section was intended to refer to an excess of assets over liabilities, and that, as the balance sheets of the company showed that its assets exceeded its liabilities at the critical time, it was solvent within the meaning of the section. The learned judge is careful to point out that "solvent" may have more than one meaning, but he rejected the view that figures in the company's accounts, which show an excess of assets over liabilities, necessarily connote solvency, and says that a company is not solvent within the meaning of s. 266 unless it can pay its debts as they become due. In this connection his Lordship referred to *London & Counties Assets Co. Limited* v. *Brighton Grand Concert Hall & Picture Palace Limited* [1915] 2 K.B. 493.

As to whether the debentures were issued for cash, this question is not referred to in the judgment, but it may be assumed from this that it was not proved that they were issued for cash within the meaning of s. 266. Certainly on the facts as reported one would hardly have thought it could be contended they were issued for cash, before the decision in *Re Matthew Ellis Limited* [1933] Ch. 458. To the practical lawyer, that decision may seem rather strange; no doubt it can be justified on the particular facts without any difficulty, but those of my readers who wish to apply it should bear in mind that the facts are very special. The real grouse in which one may be permitted to indulge about that decision is that, prior to it, one knew where one stood with regard to questions of this sort.

"Cash" within the section must be "cash absolutely and unconditionally paid to the company," said Astbury, J., in *Re Hayman Christy & Lilly Limited* [1917] 1 Ch. 283; which was a plain and straighforward statement, capable of being understood and applied by anybody. No, says the Court of Appeal, in *Matthew Ellis*; that is not the true test; money may be paid to the company on a condition, such as that a part of it must be applied in paying off the company's debt to X, and yet it may be cash paid to the company within the meaning of s. 266. However, we digress somewhat from *Re Patrick & Lyon*, which is our text for to-day, and I would only ask my readers to be cautious with *Re Matthew Ellis*; the key to it, perhaps, lies in this, that the payment of the debt stipulated to be paid was the only method by which the company could continue to get the supplies necessary to a continuance of its business. In the events that happened, the company was not allowed to continue its business for long, but that is hardly material.

In *Patrick & Lyon*, Maugham, J., in his judgment, explains that in his view the section deals with fraud, and that the words "defraud" and "fraudulent purpose" in the section are words "which connote actual dishonesty involving, according to current notions of fair trading among commercial men, real moral blame." He then goes on to point out that the word "fraudulent" is used, both in the Companies Act and the Bankruptcy Act, 1914, in cases where there may be no moral blame at all—referring, of course, to the fraudulent preference sections. It is unfortunate that the Legislature should deem our language so deficient in words to express the finer shades of meaning that it has to use one word to express two entirely different meanings, one connoting moral blame and liability to imprisonment and the other not necessarily connoting any moral blame, and not rendering one liable to imprisonment.

A more suitable adjective to qualify preference could surely be found. I have heard surprise expressed at the statement that a fraudulent preference need not involve moral blame. Who would condemn an individual, or a company, which paid sums it owed to a penniless widow before discharging its debt to a millionaire? Yet such an action might constitute a fraudulent preference; and, after all, there can be no absolute standard of morals in this connection. There may be those who would be heard to say that the relative circumstances of the creditors makes no difference, and that to prefer one above the other is morally wrong—but I think the majority of us would be loath to say that there was anything fraudulent about such an act. "I think," says his lordship, "that in exercising jurisdiction under s. 275 the court, however little it may approve of the conduct of the director who is being attacked, is bound to consider whether he has been guilty of a dishonest fraud."

In this connection it is right to point out that under s. 275 (3) persons who are within the section may receive a sentence of a year's imprisonment, which must surely indicate that actual fraud in the usual sense of the word is necessary. The learned judge then says that he is not justified in coming to the conclusion that the business of the company was carried on for a fraudulent purpose, and he distinguishes the case of a company carrying on business to clear up the position by getting in debts and selling stock from that of a company securing by purchases on credit assets available as security for debentures; and then states that he was not clear in his mind that the first respondent was deliberately intending to carry out any fraudulent purpose or to defraud creditors.

What I would emphasise as a result of this decision is that the result may be stated to be that there may be circumstances in which one can allow the business of a company to dwindle away without endangering one's own debentures issued within six months of winding up, but that each case must depend entirely upon its own facts. There can well be imagined cases of this kind, in which there was fraud, but this decision goes far to remove any uneasiness which might be felt as to the duties of directors to wind up companies which are not financially sound. Had the decision been otherwise it might have forced liquidation in some cases where in fact it might have been unnecessary.

A Conveyancer's Diary.

Vested or Contingent Testamentary Gifts.

I HAVE been considering a question with regard to the vesting of devises and legacies, and as I do not remember having written on this subject before in this column, I think that it may be of interest if I point out this week the rules which apply and mention some of the most important authorities.

It is obvious that the question whether a devise or legacy is vested or contingent usually arises in cases where there is a gift following upon a limited interest, generally a life estate.

It is difficult for a lawyer, be he counsel or solicitor, to put himself in the position of a testator who is making his own will, still more difficult is it for a judge to do so. It is notorious that a self-made will of a man with a considerable estate provides a harvest for solicitors and counsel. Yet it is said that all a man has to do in making his will is to express, not in technical, but in plain, language, what his testamentary intentions are.

Let us suppose that A does so.

I will set out the will of A, who is quite an ordinary person, and not a "business man," who might be expected to make a mess of things anyhow.

Now, A having both real and personal estate, devises and bequeaths all his property to trustees upon trust for his wife for life and after her death in the event (which we will suppose to happen) of his death without issue to transfer certain parts of his real estate and pay a legacy to B, and subject thereto to hold his estate in trust for C.

It would not, I think, occur to anyone who had not had the advantage of studying the authorities, that in such a state of facts there would be anything to come to B unless he was alive at the death of the widow of A. Nevertheless it is well established that both the real estate devised to him and the legacy bequeathed to him would, notwithstanding his predeceasing the widow of A, belong to the representatives of B. In other words that the gift of both realty and personalty vested in B as from the death of the testator subject to the life interest of the widow of A.

I have always thought this to be rather a curious consequence although, no doubt, on the whole, it works out equitably enough, but in many cases it does not carry out the testator's intention.

I like the statement of the law on this subject so far as regards devises stated by the learned Mr. Jarman, who wrote in the first edition of his invaluable book on wills, at p. 733: "The construction which reads words which are seemingly creative of a future interest, as referring merely to the futurity of possession occasioned by the carving out of a prior interest, and as pointing to the determination of that interest, and not as designed to postpone the vesting, has obtained, in some instances, where the terms in which the posterior gift is framed import contingency and would, unconnected with and unexplained by the prior gift, clearly postpone the vesting." Then after that rather involved statement ("carving out" is too precious to pass unnoticed) the learned author goes on to quote examples. "Thus," he says, "where a testator devises lands to trustees until A shall attain the age of twenty-one years, and if or when he shall attain that age, then to him in fee, this is construed as conferring on A a vested estate in fee simple, subject to the prior chattel-interest given to the trustees and consequently, on A's death under the prescribed age, the property descends to his heir-at-law; though it is quite clear that a devise to A, if or when he shall attain the age of twenty-one years standing isolated and detached from the context, would confer a contingent interest only."

The rule, then, is that, although in terms a gift is to pay or transfer to a person on the happening of an event, and therefore, appears to be contingent upon the happening of that event, nevertheless, the gift will be construed as vested and not contingent if the event is one which must happen and is not personal to the devisee or legatee. So a gift to pay or transfer money or property to A upon the death of B is vested, and if A pre-decease B his representatives will be entitled. But if the gift be to A upon the death of B, provided that A shall attain a given age, the gift is contingent, but becomes vested upon A attaining the stated age whether he survives B or not.

In *Re Bennett* (1857), 3 K. & I. 280, it was held that the use of such words as "pay and transfer" as the only words of gift in a deferred bequest do not make such bequest contingent and that the true criterion is—what is the reason for the postponement? If it were the position of the fund, as in a gift to one for life and after his death to others, the bequest in remainder vests at once; but if it were the position of the legatee as where the gift is by a direction to pay the fund to a legatee when he shall attain twenty-one, it is contingent.

That was a case decided by Sir W. Page Wood, V.-C., who was also responsible for what is looked upon as the leading case on the subject, decided a year later: *Maddison* v. *Chapman* (1859), 4 K. & J. 709.

In that case the learned Vice-Chancellor, after reviewing the authorities, said (and this I take to be the most authoritative statement on the matter)—"Where there is a limitation over, although expressed in the form of a contingent limitation is, in fact, dependent upon a condition essential to the determination of the interest previously limited, the court is at liberty to hold that, notwithstanding the words in form import contingency, they mean no more, in fact, than that the person to take under the limitation over is to take subject to the interests so previously limited. I apprehend the true way of testing limitations of that nature is this: can the words which in form import contingency, be read as equivalent to 'subject to the interests previously limited'? Take the simplest case; a limitation to A for life remainder to B for life and upon the decease of B 'if A be dead' then to C in fee. There the limitation to C is apparently made contingent upon the event of A's dying in the lifetime of B. Nevertheless, inasmuch as the condition of A's death is an event essential to the determination of the interest previously limited to him, the court reads the devise as if it were to A for life remainder to B for life and on B's death *subject to A's life interest (if any)* to C in fee. That is an intelligible principle of construction; but in order to its application, the condition upon which the limitation over is made dependent must involve no incident but what is essential to the determination of the interests previously limited. For instance, if the limitation be to A for life remainder to B for life 'and if at the death of B, A shall have died under the age of twenty-one' or 'and if at the death of B, A shall have died without leaving children,' then to C in fee, here in either case room is left for contingency. The condition of A's dying in the first case under twenty-one and in the second without leaving children, is an event which may or may not have happened when the life estates in A and B are determined; and until it has happened the limitation over is contingent not merely in appearance but actually."

I do not suppose that any layman making his own will would contemplate any such construction being put upon it. I should think that he would mean what he said (or rather, wrote) and nothing more. There is, however, this to be said about it—there is a definite rule laid down upon which reliance can be placed, and perhaps, I may end by repeating it tersely—where there is no gift following upon a prior interest except in a direction to pay or transfer, the gift is vested and not contingent upon the devisee or legatee surviving the determination of the prior interest.

For the time being I must leave the matter there.

Landlord and Tenant Notebook.

Deductions from Rent: II.—Common Law.

THE principle that any third party liable to suffer by legal action taken by a creditor against a debtor has a cause of action against the debtor has been applied in the law of landlord and tenant, notably in connection with distress. The principle has been recognised for centuries; in the Year Book of 18 Ed. IV, p. 27b, it was laid down that terror of suit, whereby the person (a surety) terrified was unable to go about his business (*besoignes*) gave him a cause of action (*dampnificatus est*)—long before the inventions of steam and petrol engines led to the development of the principles on which nervous shock is actionable, much discussed and much doubted in a series of authorities which commenced with *Victorian Railway Commissioners* v. *Coultas* (1887), 13 A.C. 222. (Nor is the development complete yet: see *Hambrook* v. *Stokes Bros.* [1925] 1 K.B. 141, C.A., and *Currie* v. *Wardrop* [1927] S.C. 538.)

As between landlord and tenant the rule was first illustrated in *Sapsford* v. *Fletcher* (1792), 4 T.R. 511, a replevin action in which the defendant was the lessee of a house on the Portland Estate at a ground rent of £5 a year, let to the plaintiff-replevisor at a rack rent of £50. Four years' ground rent being in arrear, the Duke threatened to distrain and the plaintiff paid, and then claimed the right to deduct the amount from rent due under the sub-lease. The defendant refused a tender of £30, the difference, and distrained; the plaintiff replevied. The defence argued that this was an attempt to set off in a proceeding in which no set-off was permissible, but this plea was rejected, the ruling being that there was no set-off as the plaintiff's payment was tantamount

to so much rent. A remark of one of the judges to the effect that the rent payable under the head lease came out of what was paid under the underlease may be sound economics but hardly good law, though it savours of the old feudal idea expressed in "rent issues out of the land." But carried to its logical conclusion, it would give any sub-tenant the right to go and see the superior landlord and enquire if the head rent were paid before discharging his own; and while the law sympathises with those in terror, it hardly favours those who seek it.

The nature of this right of deduction was again alluded to in *Taylor* v. *Zamira* (1816), 6 Taunt. 524, another replevin action, and the court in this case was clearly of opinion that the tenant who buys off a distrainor or intending distrainor has a right of action sounding in contract against his landlord, so that if, for instance, his disbursements exceeded his rent he could sue for the balance. The third party was, in this case, not a superior landlord, but an annuitant who had a charge and a right of distress.

Principles were again alluded to in *Graham* v. *Allsop* (1848), 3 Exch. 186, and in *Jones* v. *Morris* (1849), 3 Exch. 743. In the former Rolfe, B., subscribed to the doctrine under which the sub-tenant has a right of action, and said any payment made could be set off against a claim, and that it was only because there was no set-off in replevin that the under-tenant had been allowed to call the payment "rent." At the same time he invoked a rule that a landlord is bound to protect his tenants against paramount claims; this is more arguable. In *Jones* v. *Morris* it was said that the payment was rent because the landlord was presumed to authorise payments to those with a claim to the land paramount to his own; the fiction of implied request is thus employed, and this seems to me to be the most practical way of approaching these problems.

Compared with the position under the Law of Distress Amendment Act, 1908, to which I referred last week, the common law rights of the sub-tenant are wider in scope, for, while it has never been suggested that he can pay and deduct any debt not connected with the land, he can adopt the procedure whether the creditor is a superior landlord or one who claims under a rent-charge. I also think that a sub-tenant who effected repairs demanded by the head lessor under threat of forfeiture would be entitled to deduct the cost from rent. The statutory remedy, while it avoids the necessity for an initial outlay and applies to third parties other than under-tenants, is limited to distress for rent.

It was once held (*Beale* v. *Taylor* (1696), 1 Leon 237) that a tenant whose landlord fails to comply with a covenant to repair might effect repairs and deduct the cost from rent, but the present-day authority of that decision is doubtful, and I do not recommend any tenant to rely upon it unless he be some sportsman anxious to give his name to a leading case.

Covenants to allow deductions have occasionally been before the courts. In *Chambers* v. *Mason* (1603), Yelv. 47, a grant of a rectory at £3 16s. 8d. a year made by Queen Elizabeth was held to be void, because it recited an older agreement, made by a priory since dissolved, at a rent of £4, but giving, by a covenant, the grantee 3s. 4d. a year for portage of the tithes (corn and hay); and as the new grantor must have intended to have the same rent as before the Queen had been deceived for the 3s. 4d. was "not to be detalked out of the rent," but paid under a covenant which had been dissolved with the priory. In *Davies* v. *Stacey* (1840), 12 A. & E. 506, replevin proceedings, the issue was whether rent was £40 or £35; the tenancy agreement provided "allowance of road to the Six Bells Yard to be made as usual," and it appeared that the tenant had been in the habit of paying that amount to the owner of the hostelry named in consideration of a right of way, and that the defendant had been in the habit of allowing the deduction—but on production of the receipt only. Whether he had or had not paid on this occasion, his contention that the rent was £35 and not £40 failed; a covenant does not modify a reddendum.

A covenant providing for an abatement of rent can run with the land, and was held to do so in *White* v. *Southend Hotel Co.*, [1897] 1 Ch. 767 C.A. The lease in that case had been granted by a wine merchant, the tenant covenanting to buy wines from him, his successors and assigns, while a proviso allowed him £75 off each quarter's rent as long as he observed it. The landlord having died, his executors sold the wine business to a third party, and contended that, though the tenant continued to deal with the purchaser, the proviso no longer applied. It was held that the covenant ran with the land, and the proviso with the covenant.

Our County Court Letter.

PERSONAL INJURIES FROM DANGERS UNDERFOOT.

(*Continued from* 77 Sol. J. 416.)

In *Partridge* v. *F. W. Woolworth & Co. Ltd.*, recently heard at Coventry County Court, the claim was for £100 as damages for negligence, the plaintiff's case being that (1) while walking round the store she slipped and fell, whereby her arm was fractured; (2) her companion noticed a patch of grease on the floor, and the assistant manager (in expressing his regret) had explained that the floor was oiled once a week. The latter statement was denied, the case for the defendants being that (1) the floor was rarely oiled oftener than once a fortnight, and nine days had elapsed (without oiling) before the accident; (2) the floor was oiled to lay the dust, but a surface of grit was then laid, to prevent slipping; (3) this was done at week-ends, to allow time for drying, and the system was the best known. His Honour Judge Drucquer held that, although the system provided reasonable protection for customers, it had not been properly carried out, as a patch of grease had been left. Judgment was therefore given for the plaintiff for £55 (including £30 special damage) with costs.

LIABILITY FOR HOLDING OUT.

A question of estoppel by conduct was recently considered at Plymouth County Court in *Clark, Doble and Co.* v. *Gomm*, in which the claim was for £7 16s. 5d. as the cost of printing. The plaintiffs' case was that (1) the work was ordered by one Moore, who was about to start a bakery business (under the name of "Pattisons") at 30 Mutley Plain, Plymouth, (2) the owner of those premises was told (by Moore) that the defendant would be the tenant, (3) the application for the supply of electricity purported to be signed by the defendant. The defendant's case was that (*a*) Moore had been her paying guest, and (thinking he was financially sound) she had consented to the lease being taken in her name, (*b*) she had also lent him £150, taking as security the shop fittings, which were also bought in her name, (*c*) she had not signed the lease, and had never intended to have a share in the business or to help in the management, (*d*) although the stock was still in the shop, she had not claimed it, (*e*) the signature to the application for electricity was not hers. His Honour Judge Lias held that (1) the defendant had no share or money in the business and drew nothing from it, but (while waiting for her son) had merely had tea on the premises, (2) no partnership or agency was thereby constituted, and judgment was, therefore, given for the defendant, with costs. It transpired that Moore had contracted other debts in the name of the defendant, so that the above might be regarded as a test case.

THE RIGHTS AND LIABILITIES OF DOG OWNERS.

(*Continued from* 77 Sol. J. 384.)

In the recent case of *Negus* v. *Noble and Another*, at Shrewsbury County Court, the claim was for damages for negligence, in the

following circumstances: (1) The plaintiff (an old lady) had been looking into a shop window, when she felt something round her feet, which caused her to fall; (2) apart from noticing a dog, she knew no more, but was in hospital for nineteen weeks, and had incurred expenses—£32 8s. Corroborative evidence was given by a girl (aged twelve) who saw the dog running with a loose chain, which became entangled in the plaintiff's legs. The defendant's case was that (*a*) his wife (the co-defendant) had had the dog on a chain, when it sniffed at the bottom of a window; (*b*) she was surprised to see the plaintiff stagger, but immediately loosed the chain; (*c*) the latter was not entangled with the plaintiff, who was apparently frightened at the sight of the dog, although it was a friendly spaniel. The medical evidence was that the plaintiff had no bruises, such as a heavy fall would have produced. The jury found that there had been no negligence, and His Honour Judge Samuel, K.C., gave judgment for the defendants, with costs. An application for a new trial (on the ground that the verdict was against the weight of evidence) was made at a subsequent court, but was refused.

Correspondence.

[*The views expressed by our correspondents are not necessarily those of* THE SOLICITORS' JOURNAL.]

Solicitors Act, 1933: Proposed Rules.

Sir,—Referring to your excellent report of The Law Society's Meeting at Oxford and to Mr. H. Nevil Smart's paper, I was glad to note (1) Mr. Barry O'Brien's criticism of that part of the paper emphasising the desirability that every solicitor should have one or more partners as some safeguard against dishonesty; (2) the President's disagreement with that part of this paper; and I also note (3) that Mr. Smart himself has one or more partners.

This paper having been compiled by a member of the Council of The Law Society *and published* tends to give the public an entirely erroneous impression that their affairs are not safe in the hands of and tends to brand a single-handed solicitor.

Two points have been entirely missed (1) that there must be hundreds of honest single-handed solicitors who have not taken one or more partners—or have hesitated to do so until obliged—for the simple reason that they have felt they could better trust themselves alone; and (2) that the public (unless influenced to the contrary) may appreciate this.

Devizes, Wilts. PHILIP JOHNSON.
4th October.

The "Distortograph."

Sir,—I have read with much interest the paragraph in THE SOLICITORS' JOURNAL about my new photographic apparatus for filming in caricature.

I should like to say that the articles which have appeared in the Press about this process have brought numerous requests for photographic caricatures. The process is, however, primarily designed for film production, which is the most valuable aspect of the invention.

Though any portrait or photograph of any individual can be dealt with by this process in numerous different ways, film production must be the first consideration. Slight modification or extreme distortion can be obtained at will, and the operator can deal with any particular aspect or characteristic of the sitter, so that many genuine caricatures can be obtained from the same portrait. So far, only a few well-known public persons have been so caricatured, as it is realised that permission to use copyright portraits would have to be obtained, or original photographs taken with the understanding that they are to be caricatured with the consent of the sitter. In film production, however, no question of copyright would arise, as the subject would know what was being done.

Oxford-circus, W.1. H. G. PONTING.
3rd October.

In Lighter Vein.

THE WEEK'S ANNIVERSARY.

Thomas Plumer, born on the 10th October, 1753, at Lilling Hall, in Yorkshire, was the son of a retired London wine merchant who had left the City to settle in the Shires. He went to Eton and Oxford, and at University College he was "one of the best scholars among the undergraduates" at the time that William Scott, who became the great Lord Stowell, was the best tutor—"a very useful and ingenious man." He joined Lincoln's Inn and dignified the period of his studies by attending Sir James Eyre on assize, making himself useful to the judge whose sight was weak, by noting the evidence of the cases he tried. Personally, Plumer was a dull and worthy man and his career reflects his character. He was called to the Bar in 1778, became a Commissioner of Bankrupts in 1781, was one of the counsel for Warren Hastings and on divers points spoke for several days, took silk in 1793, became Solicitor-General in 1807, and Attorney-General in 1812. In both capacities, he strenuously opposed any reform of our ferocious criminal law, expressing himself as being "extremely jealous in his views of new theories." In 1813, he became the first and probably the worst Vice-Chancellor of England, conscientiousness not compensating for ignorance of equity. However, in 1818, he became Master of the Rolls, holding the place till he died in 1824.

FUNERAL EXTRAVAGANCE.

Recently when an unemployed man said at Marylebone Police Court that he had sold some furniture to buy clothes to wear at a friend's funeral, Mr. Mead remarked: "Don't you know that the higher the social rank, the less they spend on funerals and mourning?" County Court judges in particular often come up against the mania of the masses for extravagantly attempting to immortalise the transitory names of their relations. Widows often require a good deal of persuasion before they will renounce the satisfaction of dispersing their scanty funds on marble atrocities. Sir Edward Parry has a delightful story of a widow whom, in his judicial capacity, he once succeeded in persuading to think over the monument question for twelve months. When she came back, he said to her: "I do hope you have thought over all I said to you last time about the tombstone." She looked confusedly on the ground as if on the verge of tears. "I think," he added, "there are many better ways of showing respect." Hesitatingly she replied: "Yes, sir; so do I, sir." "I'm very glad," said Sir Edward heartily. "So am I" came the blushing answer, "you see, I'm going to be married again."

A JOHNSONIAN JUDGE.

It is very fitting that a judge, Mr. Justice McKinnon, should this year be president of the Johnson Society and well he discharged his duty in his presidential address at Lichfield. The great Doctor would, I feel, have approved the choice. With regard to his general attitude towards lawyers too much stress is sometimes laid on a couple of his reported *dicta*—that famous, "I don't care to speak ill of any man behind his back, but I believe the person who has just taken his departure is an attorney," and his rather contemptuous, "I don't hate lawyers, sir; neither do I hate frogs, but I don't like to have either hopping about my chamber." After all, at many points of his life he came in sympathetic contact with the law. His incomparable biographer was the son of a judge and a member, though an inactive one, of the Scots Bar. For one Scots judge, Lord Hailes, he had a profound admiration and we find him drinking a bumper to him "as a man of worth, a scholar and a wit." Was it not Johnson who put forth one of the best defences for a form of forensic license? "Everybody knows that you are paid for affecting warmth for your client and it is therefore properly no dissimulation . . . Sir, a man will no more carry the artifice of the Bar into the common intercourse of society than a man who is paid for tumbling on his hands will continue to tumble upon his hands when he should walk upon his feet."

THE LAW SOCIETY AT OXFORD.

ANNUAL PROVINCIAL MEETING.

[By our Special Representative.]—(*Continued*).

Mr. Fredk. G. Jackson (Leeds) read the following paper :—

The Rent and Mortgage Interest Restrictions (Amendment) Act, 1933.

"The new Rent Act," as even lawyers, in their unguarded moments, will tend to call this measure, has the rare distinction, for an enactment of its comparatively modest proportions, of having occupied the time of Parliament at intervals extending over about eight months.

This leisurely progress has had the advantage that it has allowed sufficient time for proper consideration, and—so far as can be seen at a first glance—the latest Rent Restriction Act will give less rise to litigation than, owing to faulty draftsmanship and hasty discussion, most of its predecessors did.

As, however, there was no absolute need to have passed the Bill into law before, say, 1st December, it is a pity that still more time was not spent over it, and the opportunity taken to clear up points in regard to the previous law which are still obscure; e.g., it is not really satisfactory to either landlords or tenants that, after nearly eighteen years' operation of rent restriction, it should still be uncertain whether the conversion of sanitary conveniences be an improvement which permits an increase of rent being made.

Further, it is not exactly easy to advise a client as to his legal position when to do so involves the consideration of half-a-dozen statutes, to say nothing of numerous cases thereon, some of which can hardly be said to be in unison, so that a still more leisurely progress would have had the advantage that it would have given Parliament the chance to consolidate the various Acts.

The difficulty is not lessened by the rather curious procedure of Parliament in tucking away, in a schedule, some very important provisions of the new measure.

While waiting, however, for Parliament to facilitate our task, we must do it as best we can under present conditions, so I come to a consideration of the more important provisions of the new enactment.

The chief of these is that the virtual uniformity of treatment—apart from such minor matters as the distinction between landlords becoming such, by purchase, after 5th May, 1924 and other landlords—hitherto accorded to controlled houses ceases to exist, and houses which, up till 18th July, 1933, came under the operation of the Rent Restriction Acts, are now divided into three classes.

We shall, perhaps, be able to achieve the difficult task of combining clarity and conciseness if we designate these houses as, respectively, Class A, Class B and Class C, a phraseology for which I do not claim the merit of originality.

Class A consists of houses of which, on the appointed day, both the annual amount of the recoverable rent and the rateable value exceeded, in the Metropolitan Police Area or the City of London, £45, or, elsewhere, exceeded £35, but of which either the standard rent or the rateable value did not exceed £105 in the former case, or did not exceed £78 in the latter case.

Class B consists of houses of which, on the appointed day, either the recoverable rent or the rateable value did not exceed £45 in London or £35 elsewhere, but did exceed £20 in London or £13 elsewhere.

Class C consists of those houses of which the rateable value—here the amount of the recoverable rent does not enter into the question—did not, on the appointed day, exceed £20 in London or £13 elsewhere. (By "elsewhere" I mean the rest of England and Wales; we must leave the position north of the Border for consideration by our Scots brethren.)

"The appointed day" means, as regards London (in this case, the L.C.C. area), 6th April, 1931, and, as respects the provinces, 1st April, 1931, so that the revision of assessments now in progress does not enter into the question.

As an indication of the practical effect of these figures, it may be mentioned that, speaking generally, in the provinces a house with a rateable value of £13 will have a net rental of £19 10s., and one with a rateable value of £35 a net rental of £45. As regards London, I have only space to give two illustrations: there, a house with a rateable value of £20 will usually have a net rental of £29 10d., and one with a rateable value of £45 a net rental of £61 10s., or thereabouts.

One is afraid that certain statements in the popular press have given landlords an exaggerated expectation as to their rights on and after Michaelmas Day in respect of Class A houses.

It is true that, on 29th September, 1933, these houses pass out of the ambit of the Rent Restriction Acts, but that does not mean—or will only mean in a few cases—that if the tenant do not give up possession, then the landlord may take immediate steps to recover it, without, of course, any question of alternative accommodation arising.

Before even the question of recovering possession arises, it is necessary for the landlord to serve the tenant with a notice demanding possession.

No form or mode of service is prescribed, but it is submitted that service in such circumstances as would constitute a valid service of a notice to quit will suffice for the purposes of this Act.

As the earliest date on which such notice can expire is 29th September, many notices will have been served by now, but they will be void unless they were of at least one month's (meaning calendar month) length, reckoning from the date of service.

A similar length is required for all notices made to expire after Michaelmas Day.

The notice may add that the tenant will be required to give up possession unless, before the date specified in the notice, an agreement for a new tenancy has been made between landlord and tenant.

If, however, when the notice expires, the parties have not agreed upon a new tenancy, but there is a prospect of their doing so, the position is met by a very useful provision—to some extent already embodied in the previous Acts, and which might, with advantage, be extended to all cases of landlord and tenant—to the effect that, after the date mentioned in the notice, the landlord may accept rent or mesne profits without prejudice to the validity of the notice.

Moreover, either together with or as part of the notice, the landlord may inform the tenant, in writing, of the terms upon which the landlord is willing to grant a new tenancy of the house, and he may add that, if the tenant retain possession, after the date in question, without having made an agreement with the landlord upon any other terms, the tenant will be deemed to have accepted those terms.

If the tenant accept the terms, if he ignore the notice, or if some terms other than those stated be arranged between him and the landlord, the house passes entirely outside the purview of the Rent Restriction Acts, and becomes subject to the ordinary law of landlord and tenant.

If, however, the tenant object to the proffered terms and think it unlikely that, by negotiation, he will—at any rate, in the first instance—get better ones, he may—as he may if the landlord have merely demanded possession of the premises—serve the landlord with a notice under s. 5 of the Landlord and Tenant Act, 1927, which will apply to the premises on the expiration of the landlord's notice, requiring a new lease of the premises. This must be served before the landlord's notice has expired.

In that case, failing agreement between the parties, the case will go before the tribunal appointed under the Act of 1927, as it will, if after having merely demanded possession of the premises, the landlord serve the tenant, under s. 2 or s. 4 of that Act, with notice that he is willing and able to grant to the tenant, or obtain the grant to him, of a renewal of the tenancy.

Where a new tenancy is not created, and the tenant has been (lawfully) using the premises for business purposes as well as residential ones, there may be some question as to compensation for goodwill.

Some of us thought that, having regard to the comparative ease with which mortgage-moneys can now be obtained, the Government would, when amending the principal Acts, ask Parliament to take away, entirely, the restrictions in regard to mortgages, but that has not been done.

In fact, even in regard to Class A houses, though these pass outside the Acts, mortgages upon them remain controlled

till 18th January, 1934, unless before 29th September, 1933, anything had occurred to make them decontrolled.

It should not escape attention that a small class of houses pass outside the Restriction Acts entirely on Michaelmas Day, without any transfer to the Landlord and Tenant Act, 1927, namely, premises within the limits of value fixed by the Act of 1920, and licensed for the sale of intoxicants upon the premises.

This strikes the cynical observer as one of Parliament's little ironies, for it was a decision in regard to such premises (*Epson Grandstand Association, Limited* v. *Clark*, 35 T.L.R. 525) which first showed that, though partly used for business purposes, a dwelling-house might still come within the ambit of the Rent Restriction Acts.

Class B houses need not detain us. Their rents are still limited, the landlord's right to possession is still restricted —with some slight alterations which will be noted later—and, in appropriate circumstances, they may become decontrolled as prior to 18th July, 1933.

In regard to Class C houses, the position is—if a war-time phrase may be deemed not obsolete—" very otherwise," because, while on the first two points just mentioned they are in the same category as Class B houses, they differ entirely from the latter, in respect of the third point. In no circumstances may they become decontrolled during the operation of the new Act; not even, it would seem, if a purchaser buy one when it is vacant, live in it for, say, two years, and then seek to let it.

For the purposes of the Rent Restriction Acts, it is well known, a part of a dwelling-house may be, and often is, on the same footing as a whole dwelling-house.

In applying this, however, to the provision just mentioned, caution is needed, for there is one case where it may not be applicable, viz., where a dwelling-house is a Class B house, but the occupier has sublet part of it at such a figure that the rateable value of such part and of the retained part did not, in either case, exceed £13 (£20 in the Metropolitan Area) on the appointed day.

In such a case, if the occupier give up possession voluntarily, or if an order for possession be made against him, on some ground other than the fact of the rent being in arrears, the decontrolling provisions of the Act of 1923 will apply to his part of the house, though the occupier of the other part can still claim the benefit of the new Act.

One fears that, having regard to the methods of the Assessment Authorities, considerable practical difficulty, especially in the metropolis, will be found in operating the provisions in regard to Class C houses.

It is very important to note that where the owner claims that a house with the rateable value just mentioned had become decontrolled before 18th July, 1933, it will not be possible for him to maintain his contention, unless he register the house with the register to be kept for that purpose by the council of each county borough or by that of a county district. The latter phrase is not defined, but I understand that the official view is that it means a borough, an urban district or a rural district.

Such registration must be effected before 18th October, 1933, unless the county court for the district in which the house is situate certify, on application, that there was a reasonable excuse for the failure to register before 18th October, in which case registration may be effected within seven days after the certificate has been granted. (Apparently, the day on which the certificate was granted is a *dies non* for the purpose of computing the seven days.)

As the greater part of the time within which registration could be made fell within the holiday season, it is to be hoped that the county court will make a wide use of its powers under this head.

It is suggested that an owner-occupier need not register. The view is probably correct, having regard to the wording of s. 2, sub-s. (2), but no harm will be done by his registering, if the registrar will allow him to do so.

These registration provisions are an example, if not a very formidable one, of what the Lord Chief Justice calls " The New Despotism," because they put property owners to trouble with virtually no purpose or result, because, though the omission to register proves that a house is still controlled, registration does not prove that it is decontrolled.

Any dispute as to that has still to be decided by the court. That is all to the good, but, having regard to it, why bother the owner to register?

A rather important change is made in regard to the landlord's right to possession. Where he can show that alternative accommodation—as described later—is available for the tenant, he is no longer obliged to state his reason for wanting possession.

Of course, the circumstances must be such that, if the Acts did not exist, there could be no question as to the landlord's right to possession, and the court still retains the discretion of saying, in any particular case, that it thinks the making of an order would be unreasonable.

A slight change is made in regard to the requirement as to what constitutes alternative accommodation, so that decisions under the principal Acts or other earlier ones may be no longer *in pari materia*.

Under the Act of 1920, alternative accommodation had to be such as was, in the opinion of the court, reasonably equivalent, as regards rent and suitability, in all respects to the tenant's existing accommodation.

Now, it must be reasonably suitable to the needs of the tenant and his family as regards proximity to the place of work and either similar as regards rental and extent to a house provided in the neighbourhood by the municipality for persons whose needs are, as regards extent, similar, in the opinion of the court, to those of the tenant and his family, or it must be otherwise reasonably suitable to the means of the tenant and to the needs of the tenant and his family, as regards extent and character.

In practice, this amounts to little more than giving statutory recognition to the norm which many county court judges have used in the decision of possession cases under the principal Acts, but it should tend to greater uniformity in judicial rulings.

It should, of course, be borne in mind that the former requirement that the proffered alternative accommodation must consist either of a dwelling-house to which the principal Acts apply, or of premises to be let as a separate dwelling, on terms which will, in the opinion of the court, afford the tenant security of tenure reasonably equal to that afforded by the principal Acts, still holds good, save where a certificate is produced from the local housing authority, showing that suitable alternative accommodation will be available for the tenant by the date named therein. A minor change is that it is sufficient if the alternative accommodation will be available at the date at which the order of the court is to take effect. Formerly, alternative accommodation could only be considered if available at the date of hearing.

As regards those cases where the showing of suitable alternative accommodation to be available for the tenant is not a condition precedent to the success of the landlord's claim for possession, one or two changes have to be noted.

The first is a very salutary provision, designed to reduce overcrowding. The court has now power to grant possession where a dwelling-house is so over-crowded as to be dangerous or injurious to the health of the inmates and the court is satisfied that the over-crowding could have been abated by the removal of any lodger or sub-tenant (not being a parent or child of the tenant) whom it would, having regard to all the circumstances of the case, including the question whether other accommodation be available for him, have been reasonable to remove, and that the tenant has not taken such steps as he ought reasonably to have taken for his removal.

The second is where the landlord reasonably requires possession for himself or a relative. He may now require same not merely for himself or any son or daughter of his, aged over eighteen years, but for his father or mother.

It will be seen that the new clause does not cover expressly a case where, owing to the circumstances of the husband's work or some other cause, he and his wife are obliged, for the time being, to live apart, and he seeks possession of the house for her occupation. Possibly, however, occupation by the wife would be held to be constructive occupation by the husband.

The date before which, if he wish to avail himself of this special provision, the landlord must have become such is now 12th July, 1931, instead of 5th May, 1924.

The proviso that, in deciding to grant an order in such a case, the court must be satisfied that having regard to all the circumstances of the case, including the question whether alternative accommodation is available for the landlord or tenant, greater hardship would be caused by refusing an order than by granting it, still remains. It should never be forgotten that, in all cases where possession is claimed, the judge has a discretion.

To take an extreme case: A tenant is heavily in arrears with his rent, he has damaged the property, he has committed a nuisance, or annoyance, against adjoining occupiers, he has taken in a sub-tenant unlawfully, he has caused overcrowding and declined to remedy it, he has been guilty of a criminal offence in regard to the premises, but the judge declines to make an order for possession.

It would not be easy to get a higher court to over-rule the county court judge's decision, because the exercise of his discretion is a matter of fact and not of law.

Before we leave the question of recovery of possession, it should be noted that, in certain cases—which, in practice

will almost always be confined to country cottages—the landlord's position is improved.

This is by s. 5 of the new Act, which, by the way, affords a good illustration of one of those practices of Parliament which are so irritating to our profession.

It passes an Act, in which a new phrase occurs of very unlawyer-like wording. After much discussion in legal circles and some rulings by the court, one begins to arrive at an understanding of the legal meaning of the phrase, and then, hey, presto, Parliament passes, in this connection, an enactment in which a different wording is used, so that one has to start all over again.

I refer, of course, to the use of the words "Actual possession" in s. 2, sub-s. (3), of the 1923 Rent Restriction Act, and the use in similar circumstances, if of narrower application, of the word "possession" in s. 5 of the present Act.

Moreover, the phrase "has . . . been in possession" is used, when it would seem that "has come into possession" would probably have been a fitter expression of Parliament's intentions.

Apparently, those were that if, after the passing of the Act, the landlord of a house with a recoverable rent not exceeding 3s. a week gets possession of it, and re-lets it, the new tenancy will be—except as regards the amount of the rent—decontrolled, so that, after due notice to quit, possession can be had as of course.

Whether, however, the section carry out Parliament's intentions can only be determined by the court.

In some cases, owing to changes in ownership or tenancy, or both, it is almost impossible to say what the standard rent of a controlled house is. This is met by a provision that the court may fix the standard rent.

The amount is to be determined by reference to the standard rents of similar dwelling-houses in the neighbourhood, and the sum thus found will be the standard rent, not merely in relation to the matter then before the court, but for all purposes, unless the court determining the amount orders otherwise.

It is to be regretted that this provision only applies in the event of proceedings being taken in regard to the house.

Had power been given to the court to fix the standard rent on the application of either landlord or tenant, it is probable that this would have tended to avert disputes between them.

It has always been a matter of wonder to some of us that, through circumstances which have never been explained, Parliament, in passing the Act of 1920, omitted to include in that consolidating measure the salutary provision in s. 1, sub-s. (1), of the Rent Restriction Act, 1919, whereby a tenant who was guilty of profiteering in regard to his sub-tenants or lodgers lost, if the court thought fit, the benefit of the principal Act.

It has been a matter of still greater wonder that, during the several occasions which have presented themselves since then, opportunity was not taken to restore this provision which, during the short time that it was in force, did a certain amount of good and would probably have done more, as it became better known.

Now, however, the matter has been put right, and, not only are the court's former powers restored, but such profiteering is made a criminal offence. The latter provision only applies, however, where the standard rent has been apportioned between the part of the house which the tenant retains and the part which he sublets, so it is obvious that profiteering in regard to lodgers merely affords a civil remedy.

One is inclined to doubt whether, by itself, this creation of a new criminal offence will do much to remedy matters. Many sub-tenants will be unaware of the new provision, just as, after the lapse of fifteen years, they are still unaware of the fact that they may apply to the court to have the standard rent of the house apportioned.

Others, while having some idea of the law, will hesitate, through fear of consequences, to invoke its aid.

It may be taken, therefore, that the evil of excessive rents in regard to sub-letting will not be diminished greatly unless social workers, the press and local authorities give their aid.

The last-named have power, under s. 11 of the new Act, to institute proceedings in respect of any offence, whether under it or under the older Acts.

This is, however, merely permissive, and there is a danger that this provision will become as much of a dead letter as the Statement of Rates Act has done.

Another power which the Act bestows upon local authorities is that of publishing information, for the assistance of landlords and tenants, as to their rights and duties under the principal Acts—though, rather curiously, not under this one—and to furnish particulars as to the availability, extent and character of alternative accommodation.

I know more than one local authority, however, which has read this provision as including the 1933 Act. It will be interesting to see whether the Ministry of Health's auditor disallow the extra expense this incurred.

This is less objectionable than the original proposal, enabling local authorities to give advice upon the Rent Restriction Acts, which would have resulted in the confusion which always follows the well-meant, but mistaken, efforts of amateur lawyers, but, even as it stands, the clause is not altogether harmless.

The first portion tends to obtrude upon the province of the press, and it will be, sometimes, hard to say where information ends and advice begins, while the second portion tampers with the function of estate agents.

One may conclude with reference to a minor matter, viz., that of succession to the tenancy of a deceased person.

In future, a member of the family—a phrase which might well have been defined—of a deceased tenant will only be entitled to succeed to the tenancy if he or she was not merely residing with the deceased at date of death, but had been so residing for not less than six months immediately before that event.

In this connection, it should be noted that the new Act does not overrule the decision in *Pain* v. *Cobb*, 47 T.L.R. 596, where it was held that on the death of the person who had succeeded to a tenancy by virtue of s. 12, sub.-s. (1), cl. (*g*), of the 1920 Act, there is no further right of succession. Possibly, this decision will afford the only opening whereby Class C houses may pass out of the Acts.

A word as to the regulations made under the Act by the Minister of Health, which are provisionally in force and will become fully so, unless, within about three weeks after its re-assembly, Parliament annul them.

These provide a new form of notice of increase of rent, and a form to be signed by the landlord or agent and inserted in the rent-book of every house coming under the Rent Restriction Acts.

It is important to note that the latter has to be inserted "as from September 30th," not "after September 30th."

The maximum penalty for an omission by the landlord to comply with this regulation is £10. Rather oddly, the agent—who, if an offence take place, will usually be the actual offender—goes scot-free, so far as the law is concerned.

The Rent Restriction Acts are to expire at Midsummer—not, as previously suggested in regard to intended expiration, Christmas—1938.

Those of us who remember that the original Act was only to remain in force till the end of six months after the close of the great war and recall the number of dates suggested since then for expiration, are almost as sceptical as to expiration in 1938 as Wamba was as to the durability of the latest final peace between the Crusaders and the Saracens.

Mr. C. E. Martin (Southampton) referred to Class A houses, of which the recoverable rent and rateable value exceeded a certain amount. The meeting had understood that all such houses became decontrolled as from 29th September, subject to a certain notice being given. The author had struck the right note when he had said that a certain statement in the popular press might have given landlords an exaggerated expectation of their rights in respect of these houses. Many landlords seemed to overlook the fact that the houses were only those to which the principal Acts applied. Many landlords, immediately after the Act had come into force, had rushed to give the statutory notice demanding possession on 29th September, without considering at all whether the house came within the Act or not.

Suppose, Mr. Martin suggested, that a dwelling-house were let upon a quarterly tenancy and the landlord had never served a notice of increase in the rent or in any way made the tenant a statutory tenant: then, immediately the new Act came into force, he served the statutory notice to determine on 29th September; it was doubtful whether this notice could possibly have effect. Before any such statutory demand could be made the tenant, he considered, must be made a statutory tenant by determination of the contractual tenancy. Even then, if the landlord should serve an ordinary notice to quit, he could not serve statutory notice at the same time and make the two notices run together so that the tenant could be evicted immediately the contractual tenancy was at an end.

By s. 1 (3) of the Act public-houses were decontrolled as on the 29th September, but a public-house was a dwelling-house to which the Act applied, consisting of premises licensed for the sale of liquors. He asked the author's assurance that a public-house came within the definition of an ordinary dwelling-house.

Mr. Jackson, in reply, said that he hesitated to speak dogmatically. He said that he was inclined to agree that

where a landlord had taken no steps to make a tenant a statutory one he must do so before he would be in order in serving the notice under the act.

The position of public-houses was not quite clear, and would probably need to be settled by the Court; he thought, personally, that they were dwelling-houses.

Mr. W. T. DE B. BARWELL (Seaford) referred to Mr. Jackson's remark that the authority with whom the houses were to be registered was not defined in the Act. These authorities were, he said, defined in two of the Local Government Acts.

Mr. ISIDORE KERMAN (London) read the following paper:—

THE REFORM OF THE LAW OF MARRIED WOMEN HAVING PARTICULAR REGARD TO THEIR HUSBANDS AND CREDITORS.

In venturing to avail myself of the privilege of addressing this Society, I will endeavour to bear in mind my duty to observe a strict relevancy to the subject of my paper. This admonition is, I find, all the more necessary by reason of the multitude of questions which seem at every stage to present themselves to one who examines even superficially into the law relating to married women, and it is my purpose here to deal more essentially with certain monetary aspects of the matter affecting themselves and their creditors. It may well be, and there are, I imagine, amongst us some who do not doubt that the marital contract or status and the law of divorce are to-day a more fitting subject for examination and reform than any aspect of married life which is purely and substantially a monetary matter, but there, one is dealing with conditions which are bound up with conflicting views of religion, morals, taste and sentiment, while here I am hoping to speak of reforms which I firmly believe to be no longer the subject of any division of view either amongst lawyers or the public at large.

The first proposal for the alteration of the law to which I venture to draw your attention is that the liability of the husband for the torts or civil wrongs of the wife should be abolished. It will not be forgotten that in *Edwards* v. *Porter* [1925] A.C. 1, Lord Birkenhead and Lord Cave were of the opinion that the Married Women's Property Act, 1882, had abrogated the common law rule as to the husband's liability for the wife's torts, while the other three peers who completed the constitution of the court took the contrary view. It is, therefore, by the narrowest margin that the law of England was declared still to display the anomaly of which I speak. Lord Cave said: "I think that when the older authorities are examined it becomes clear that the true explanation of the rule is to be found in that legal unity between husband and wife which existed when the rule was formulated, and which in those days rendered it inconceivable to a lawyer that a married woman should sue or be sued alone." Lord Sumner said: "I fully recognise that the Act of 1882 is illogical"; and in *McNeall* v. *Howes* [1923] 2 K.B. 538, Lord Justices Bankes said: "The law relating to the husband's liability for such a tort rests on a fiction which, in spite of the passing of the Married Women's Property Act, 1882, must still be recognised by the court."

At the time that the unity of husband and wife was more akin to fact than fiction, a husband was entitled by law to inspire his wife with a distaste for tortious indulgences by what I may perhaps colloquially describe as "knocking her about," and although Bacon's Abridgment Baron and Feme (B) states that while a husband may beat his wife, he may not do so in a violent or cruel manner, yet it is possible to suppose that husbands whose wives were tortiously inclined regarded their problem as one which called for and would yield to practical treatment.

Not so to-day. We have all seen the libel or slander, the assault and nuisance cases and kindred proceedings in which the helpless and amiable husband is mulcted time and again for the wrongdoing of his wife, whose conduct nobody deplores more than he. When in addition it is remembered that in place of the husband's former rights in respect of the property of the wife, he cannot now touch any of it during her lifetime, and she can dispose of it in its entirety by will, leaving to the husband nothing at all, is it not apt to describe the retention of the husband's liability as a senseless anachronism?

The next matter to which I desire, if I may, to draw your attention, is my suggestion that the restraint upon anticipation should either be abolished or at least so modified as to prevent the married woman from effectively resorting to a dishonest or arbitrary refusal to pay her just debts.

It is unnecessary for me here to speak of the origin of the "restraint," which is well known, beyond re-stating that it was, of course, constructed on the foundation of the separate use. The separate use was occasioned by reason of the former inability at law of a married woman to hold property apart from her husband, and the separate estate having been thus created the restraint was devised to protect the wife against attempted inroads by the husband on her property. The restraint is said to have been invented by Lord Thurlow, but no one can suppose that if the law affecting the proprietary rights of husband and wife had then stood as it now stands, Lord Thurlow or any other lawyer would have conceived the restraint in the form which it took. The position now is that married women amongst the classes in possession of moderate means, and of course in the more richly endowed classes, frequently own property subject to a restraint together with property free from a restraint. It is in modern conditions found quite unnecessary to protect the woman's unrestrained property from misuse or seizure by the husband and there is no good reason to suppose that the restraint is really necessary in respect of any of her property so far as protection against the husband is concerned. Far more usual is it in these times for the wife's independence of the husband to be used as a protection of the husband against *his* creditors, as every practising lawyer is well aware. What, however, has come about is that married women now make contracts daily and in countless cases upon which they are individually liable, but the property which they hold subject to a restraint which was devised as a protection against their husbands is completely protected against their creditors, and it is my experience and I believe that of many other practitioners that in far too many cases the married woman enjoying a substantial income from property subject to a restraint declines for one moment to use a penny of her income in paying her debts. The court can only enable a disposition of the property to be made if it is for the benefit of the married woman, and it will not intervene in any way in order to benefit the married woman's creditors. Such power as there is to modify or remove the restraint remains purely discretionary and can only be exercised with the consent of the married woman (Law of Property Act, 1925, p. 169). The supposed danger of interference by the husband is indeed now remote from the reality which it presented in an era when the husband regarded the notion of his wife's holding separate estate as a daring modern innovation or in an era when physical chastisement was approved by the law, but the restraint remains. It operates during coverture only. It affords no protection to the widow with a family of children, but it protects the woman with a wealthy husband, and whether she lives with him or not—at that. I suggest that the most which ought to be allowed or is called for in the protection of the property of married women could be more than adequately achieved by the ordinary discretionary trust.

I next desire to ask why should a married woman be amenable to bankruptcy only if she is engaged in trade. Bankruptcy is no longer a mere proceeding for the benefit of embarrassed traders. A man, a spinster, a widow—these can be adjudicated bankrupt irrespective of any connection with trade, while the married woman continues to enjoy an unqualified immunity. If bankruptcy process were available against a married woman who ran up debts either with no intention or with no prospect of paying them, the suspension of the discharge would at any rate for a time bring her further excesses within the purview of the criminal law in the case of non-disclosure of the outstanding bankruptcy. It may be asked whether these observations have more than an academical interest. My reply is that in that type of case where the husband or wife both refuse to discharge the traders' account and judgment goes against the wife alone, on the ground that she ordered the goods without authority to pledge her husband's credit, it is common to find that the wife, while she has the means to pay, will steadfastly refuse to do so and it is practically impossible to bring any pressure to bear upon her. If her property is restrained there is nothing to be done—while as to her unrestrained property one has merely the expedient of the cross-examination as to means, and I doubt whether practitioners have found that the results are positive in any case out of ten.

I come next to the practical immunity of a married woman from committal to prison on a judgment summons, and I suggest that there is not the slightest reason to differentiate now between married women and others.

The technical aspect as explained in *Scott* v. *Morley*, 20 Q.B.D. 120, is that a judgment in an action brought under sub-s. (2) of s. 1 of the Married Women's Property Act, 1882, is merely a judgment that the plaintiff recover a sum out of the separate property of the married woman, and that there is no "debt due from her." The debt, said Lord Justice Bowen, is only "due from" the married woman *sub modo*; in other words, the freedom from imprisonment under the Debtors Act, 1869, turns on no question of moral principle or on any deep-rooted precept from the bosom of the common law, but merely on the narrow construction of words in the Act of 1882 and that of 1869. I venture to say that the same

discretion to commit to prison as now rests in the hands of our judges in relation to widows and unmarried women could safely be entrusted to them in the case of married women, and that in many such a case the ends of justice would be served, and not, as at present, defeated. I should, I think, add that I have not intended to speak at large on the question of committal for debt. It may well be that those who are in prison for debt are only there because the judge formed the erroneous view that they could pay, and that their very presence in fact proved that the judge was wrong in sending them there. That raises another question, but all I am urging is that whatever may be right in the case of the others is equally applicable in the case of the married woman, and I do not believe that there remains to-day any body of opinion which favours the unrequited retention of the husband's monetary burdens in respect of the wife's wrongdoing, or the continued exemption of the married woman from the ordinary processes by which the rest of the community are ordered, and so far as possible obliged, to honour their obligations.

Mr. KERMAN added: For the sake of brevity I have omitted to deal with many other matters dealing with this subject, but I think that it would be instructive to note that in 1925 a Bill entitled: "The Married Women (Torts) Bill" passed through the House of Lords. This Bill had a second reading in the Commons but was withdrawn in December, 1925. The Prime Minister said that pressure of other business had made it impossible to pass the Bill into law that session, but that he hoped to introduce it next session. That was eight years ago, and nothing has been done since.

The text of the Bill, which is short and to the point, is as follows: "The husband of a married woman shall not as such be liable to be sued or be made a party to any action or legal proceedings brought against her in respect of any torts committed by her whether before or after the marriage."

It is interesting to note what was said in the House of Lords in the debate on the Bill. The Bill was introduced by Lord Cave, who was, you will remember, one of the judges in the case of *Edwards* v. *Porter*, to which I have referred. In the course of the debate Lord Buckmaster said: "As the law stands to-day a great and unmerited injustice may often be done to a man who, while he is wholly unable to control his wife's malicious propensities, may be rendered liable for the damages arising out of her wrong-doing. While I am prepared to assent to the Bill, I cannot avoid saying that I think it unfortunate that the Government do not take steps to have one complete examination of the whole relations of men and women, and alter the thing wholly and for good. As it is, all that we do is to take something here and there, take one step forward one day and, being afraid lest we have gone too far, go back the next day. We have never attempted to rearrange the whole relations of men and women with regard to the new conditions in which the whole world finds itself. While I am glad to find that this small Bill is going to pass, I greatly regret that it has not a larger and wider scope." Lord Haldane said: "If the Bill is to pass in the present session it cannot go beyond its present form. I agree that there are several other questions on which the law relating to the relations of husband and wife requires to be looked into and altered, but just now we are concerned with an obviously proper amendment of the law which can stand by itself without prejudice to other questions, and I desire to see this Bill passed as quickly as possible."

I do not think that I should conclude this paper without a reference to the most recent case I have been able to find on the subject; that is the case of *Gottliffe* v. *Edelston* [1930] 2 K.B. 378, in which case the late Mr. Justice McCardie read a considered and learned judgment dealing with the relations of husband and wife. He concluded the judgment, as I shall conclude this paper, with the following words: "I have considered with care the intricate provisions of the Married Women's Property Act, 1882. At every point of research on every aspect of the case I find nothing but confusion, obscurity and inconsistency. I find privileges given to a wife which are wholly denied to a husband, and I find that on the husband there has fallen one injustice after another. I hope that the day is not far distant when the vital and far-reaching relationship of husband and wife will receive the attention of Parliament. When that day comes I trust that the present features of injustice will be removed, that the existing obscurities will be made clear, and that the great institution of marriage will gain a new dignity and a new strength through a wise and beneficent amendment of the law."

THE PRESIDENT called on some of the married women present to open the discussion.

Miss CARRIE MORRISON (Mrs. Appelbe) supported all the propositions put forward by Mr. Kerman. She had wanted to read a paper on the same subject herself. She said that to any woman of independent spirit the present position of married women was galling in the extreme. No woman wanted to take all the advantages and none of the disadvantages; she wanted to take the rough with the smooth and bear any burdens there were to bear, and not thrust them on any husband she might happen to have. The law said that any allowance or housekeeping money which the husband gave to the wife was the husband's; until the law said that such money should be the wife's own property, they would be no better off even if a married woman could be sent to prison. A woman should be in the same position as a man, and an order should be made for her to pay out of the housekeeping money. Income tax was another scandal in this respect; the husband was still liable for his wife's tax, and a separate return made no difference to the amount he had to pay. As the law stood at present, it put a great premium on living in sin, as unmarried couples obtained considerable reduction if they both worked and made a separate assessment. A County Court judge had said recently that women had all the advantages and took no steps to have the anomalies removed, but Parliament never seemed to have time for anything important!

Mr. B. A. WORTLEY (Huddersfield) said that there was something to be said for the interests of the family if a woman was to be committed to prison. Should not the interests of a young family, he asked, come before the interests of a tradesman?

Mr. BARRY O'BRIEN (London) said that he wished Miss Morrison represented the views of all women in the country. Men felt that unless some alteration in the law were soon made they would be compelled to ask for full administration of the funds of the wife; a request which no doubt would lead to a storm of antagonism from women.

Mr. G. E. HUGHES (Bath) asked whether the Council would feel strongly enough on the subject to make representations to the Government at an early date, or whether they would like to have a resolution from the meeting.

THE PRESIDENT asked what happened if the father went to prison, and thought that if the mother went the baby would have to go too.

Later in the morning the resolution, in the following terms, was put to the meeting by Mr. Hughes, seconded by Mr. Kerman and carried unanimously:—

> "That this meeting of The Law Society requests the Council to take steps to bring to the attention of the Government the present anomalous condition of the law affecting married women with a view to the early reformation thereof by the reintroduction of Lord Cave's Bill of 1925, with or without special amendment or enlargement as might be thought desirable."

Mr. JOHN SNOW (Oxford) read the following paper:—

NOTES ON RECENT PROPERTY LEGISLATION WITH SOME SUGGESTIONS FOR AMENDMENT.

The purpose of this paper is not to provide a general commentary on the property legislation of 1925 and subsequent amendments or to make any general criticism of this legislation, but to call attention to some points in which it appears that amendment might usefully be effected. The points dealt with will be in most instances minor points, but, as regards the Settled Land Act, 1925, and the other enactments relating to settled land, I am venturing to suggest two amendments in matters of principle which appear to me desirable.

The first of these amendments relates to the provisions contained in ss. 22 to 24 of the Administration of Estates Act, 1925, and s. 162 of the Judicature Act, 1925, dealing with special grants of probate or administration in respect of settled land. I suggest that the whole matter would have been dealt with more simply by providing that, on the death of a tenant for life of settled land, the land should forthwith vest in the trustees of the settlement, whether it continues to be settled land or not. It is difficult to see what useful purpose is served by requiring a grant to be made in respect of settled land. If it is thought that because the fee simple was vested in the tenant for life it must on his death vest in a personal representative of his, it might be provided that the land shall vest in the trustees as the special personal representatives of the tenant for life without any grant. If the land continues to be settled land, the trustees are entitled to the grant unless they renounce, and there is no reason why they should renounce. Under the decision in *Re Bridgett and Hayes* [1928] Ch. 163, this is not so if the land ceases to be settled land on the death of the tenant for life, but one is perhaps justified in doubting whether it was not the intention of the framers of the Act that the trustees should be entitled to the grant whether the land remained settled land or not, and it is convenient that the land should vest in the trustees in any case. *Re Bridgett and Hayes* has been welcomed as a convenient decision, and, as long as a grant is necessary in respect of

settled land, this may be so, but it is in principle anomalous. The trustees of the settlement are the persons who are acquainted with its provisions, and they ought to be the persons empowered by law to indicate what is to happen to the land on the death of the tenant for life. A common case is that a testator by his will gives land to his wife for life and after her death to his trustees upon trust for sale. The trustees will in this case be trustees for the purposes of the Settled Land Act, and if the land were made to vest in them on the death of the tenant for life they would be in a position to sell in accordance with the trust. Under the decision in *Re Bridgett and Hayes*, however, as the land ceases to be settled land on the death of the tenant for life, a general grant is made to the executors appointed by her will, or to her administrators who are persons interested in her residuary estate, and these executors or administrators, who have no connection with the settled land, must either make a title by selling themselves, contrary to the intention of the testator, or assent to the vesting of the land in the trustees of the settlement before the latter are in a position to sell. In many cases the matter is " all in the family " and the question who can make a title is of little importance as long as a title can be made, and therefore, the decision in *Re Bridgett and Hayes* has not created so much difficulty as might have been expected, but it is submitted that this decision is anomalous, and, if the provision suggested were enacted, then *Re Bridgett and Hayes* would be swept away. If it is suggested that the requirement of a grant on the death of a tenant for life of settled land will prevent evasion of estate duty, it may be pointed out there is no such requirement in respect of land settled on trust for sale or in respect of settled securities.

Another point in which the Settled Land Act might be simplified arises in connection with land becoming vested in an absolute owner in fee simple or in trustees for sale subject to family or other charges. Where the charges are of the nature indicated in s. 1 (1) (*v*) of the Settled Land Act the effect of the Act as originally passed was that the owner in fee simple or trustees for sale could not deal with the legal estate subject to the charges. This was found to be inconvenient in practice and was altered by s. 1 of the Law of Property (Amendment) Act, 1926. In a case of this sort, however, an absolute owner subject to family charges is still a person having the powers of a tenant for life, and can overreach the family charges by selling under the Settled Land Act, the purchase money being paid to the trustees of the settlement. On the question whether trustees for sale in similar circumstances can overreach the family charges, there has been considerable litigation, and the matter has not yet been fully settled. The principal cases are *Re Leigh's Settled Estate* [1927] 2 Ch. 13; *Re Parker's Settled Estate* [1928] Ch. 247; and *Re Norton's Settled Estate* [1929] 1 Ch. 84. Where the charges are not of the nature indicated in the paragraph referred to, an absolute owner can overreach the charges by creating a special settlement under s. 21 of the Settled Land Act, 1925, or a special trust for sale under s. 2 (2) of the Law of Property Act, 1925, but in either case the trustees must be appointed or approved by the court or must be a trust corporation. Similarly, trustees for sale can overreach charges of this sort if they have been approved or appointed by the court or are the successors in title of individuals so approved or appointed, or if the trustees are a trust corporation. These provisions add a good deal of complication to the scheme of conveyancing contemplated by the Settled Land Act and other Acts, and it is suggested that they are not worth retaining. No vendor in such circumstances as are contemplated will willingly incur the costs of an application to the court or the acceptance and withdrawal fees payable to a trust corporation, if they can be avoided. The difficulty in overreaching charges of this sort arises usually not from any inability to find persons who are able and willing to deal with the charges on proper terms, but from a desire on the part of the owner to receive the purchase money himself instead of its being paid to trustees, where the property dealt with is a small part only of the property which is subject to the charge. If a special settlement or a special trust for sale is created by the owner in the circumstances contemplated, the trustees thereunder, having received the purchase money, would have to invest it, and would not be safe in paying even the income to the owner without communicating with the persons entitled to the benefit of the charges, to ascertain that the income was not required for payment of an annual sum or of interest on a capital sum charged on the land. What is the nature of the " charges " which have to be considered? Section 1 (1) (r) of the Settled Land Act refers to rent-charges and capital annual or periodical sums and the overreaching provisions of s. 21 of the Settled Land Act and s. 2 (2) of the Law of Property Act refer to equitable interests and powers affecting the legal estate or having priority to the trust for sale. Equitable interests will be either annual or capital sums. Equitable powers may be powers to charge annual or capital sums on the land or powers to declare trusts in respect of the land itself. If land is limited by a trust instrument upon such trusts as A shall appoint, and subject thereto in trust for B in fee simple, the land should be deemed settled land and B should have the powers of a tenant for life pending the exercise by A of his power, and B's beneficial interest ought not to be a legal estate. It is not quite clear whether this result follows from the provisions of the Settled Land Act, but it is submitted that if it does not the Act should be amended. Setting aside for the present the case of a trust for sale, we are left with a case of an absolute owner in fee simple whose estate is subject to annual or capital sums charged on the land or to powers to charge annual or capital sums. With regard to capital sums, such an estate owner is in effect in the same position as an estate owner subject to an ordinary mortgage, either legal or equitable, and, as regards annual sums, the position of the estate owner is analogous to that of an estate owner whose estate is subject to a legal rent-charge. It is submitted that he requires no special powers to overreach capital or annual charges, but only to be in a position to ascertain without difficulty the persons enabled to deal with the capital or annual charges. Taking the usual case where the charges are jointures or other annual sums and portions or other capital sums arising under a settlement, it is submitted that the land should be no longer regarded as settled land when it is held by an absolute owner subject only to charges of this sort, but that the deed of discharge executed by the trustees of the settlement as regards the land, should state that it is subject to a capital sum secured by a legal term of years, or to one or more annual sums payable during the life of a named person, or during the lives of named persons and the survivor of them. In the case of a capital sum, the trustees should be given power to deal with it, and in the case of annual sums similar powers should be given either to the trustees or to the annuitants. It is suggested that, where there is only one annual sum and the annuitant is entitled absolutely for his or her life, he or she should be given power to deal with the annual sum without reference to the trustees, and in other cases the trustees should be given these powers without reference to the annuitants. This will not be any hardship to the annuitants, as the owner of the land, being a person having the powers of a tenant for life, can at present overreach the charges, the purchase money being paid to the trustees. Wider powers of releasing land from the charges on proper terms might be given to the trustees either generally by the Act or in any particular case by the settlement, and if this is done the trustees might be required as between themselves and the annuitants to obtain the consents of the annuitants to the exercise of powers of releasing, but a purchaser should not be concerned to see that such consent has been obtained. The provisions contained in s. 31 of the Settled Land Act, for securing that the trustees of a settlenemt should be the trustees of a compound settlement of which that settlement is the earliest part, should be retained, or if necessary strengthened.

If these two suggestions were adopted, the position would be that, where land has been settled by means of a vesting deed or assent and a trust instrument, and subsequently comes to be held by an absolute owner subject to family charges arising under the settlement, the trustees of the settlement would execute a deed declaring that the land is vested in the owner A in fee simple free from all the limitations, etc., arising under the settlement, except a capital sum of a stated amount payable to the trustees (or to a named mortgagee if the sum has been actually raised) secured by a term, and either to an annual sum of a stated amount payable to a named person during his or her life or to annual sums not exceeding in the whole a stated amount payable during the life of the survivor of named persons with which the trustees have power to deal. The owner will then be in a position either to deal with his legal estate in fee simple, subject to the charges or any of them, or to arrange for them to be overreached by procuring the concurrence of the trustees or the annuitant, as the case may require. Similar provisions might be made to cover the case of land becoming vested in trustees for sale subject to family charges, and to the case of equitable charges not arising under a settlement.

Section 13 of the Settled Land Act has given rise to considerable difficulty. This section provides that, where a tenant for life or statutory owner has become entitled to have a principal vesting deed executed in his favour, then until a vesting instrument is executed any purported disposition of the land *inter vivos* by any person other than a personal representative (not being a disposition which he has power to make in right of his equitable interests or powers under a trust instrument) shall not take effect except in favour of a

purchaser of a legal estate without notice. It was decided in the case of *Re Alefounder* [1927] 1 Ch. 360, firstly, that this section does not apply if the land has ceased to be settled land before any vesting deed is executed, and secondly, that the dispositions affected by the section must be dispositions under the Settled Land Act on account of s. 112 (2) of that Act. The second part of the decision appears colloquially speaking to " knock the bottom out of " the section, as it is not likely that any attempt would be made to execute dispositions under the Act until a vesting deed had been executed. If, however, this part of the decision were reversed by an amending Act but the first part of the decision retained, the effect of the section could be practically nullified, as it would only be necessary, e.g., if land was held in trust for A for life with remainder to B in fee simple, for A and B to execute conveyances of their equitable interests to C who would then be in a position to say that the settlement had come to an end, and that on taking a conveyance from the owner of the legal estate he would become the absolute legal and beneficial owner. It is submitted that it would be convenient to retain this section as regards settlements existing on the 1st January, 1926, omitting the exception in favour of a personal representative and omitting the words in the parenthesis referring to dispositions in right of equitable interests or powers, and providing that if the vesting deed were not executed before the death of the tenant for life the trustees of the settlement should nevertheless execute a vesting deed declaring that on the 1st January, 1926, the land became vested in A in fee simple upon trust to give effect to the provisions of the settlement, that the trustees are the trustees for the purposes of the Settled Land Act, 1925, that A died on a date named, and in a proper case that the land thereupon became vested in a new tenant for life, absolute owner, or trustees for sale with any further statement that the case may require.

The general effect of the amendments now suggested would be that, where land has once become settled land, there will be a vesting deed declaring either that A is the tenant for life and that X and Y are the trustees, or that X and Y are trustees and statutory owners. A purchaser will have to verify these statements as regards a settlement existing on the 1st January, 1926, but not in other cases. After the execution of the first vesting deed, a purchaser will only be concerned with further deeds executed by the trustees and the tenant for life, or by the trustees alone, where there is no tenant for life, or where the tenant for life named in the last vesting deed is dead, and indicating what person or persons have now acquired power to make title to the land, and with deeds executed on the appointment or retirement of trustees. Further details of the amendments which would be required to bring about this result would have to be worked out, but the main lines of the amendments have been indicated, and it is submitted that they would result in a considerable simplification of the Settled Land Act.

Reference may also be made to the following sections of the Settled Land Act :—

Section 29.—This section deals with land held on charitable trusts. Sub-section (2) preserves existing requirements as to consent to be given to sales and other transactions, and sub-s. (4) amends the requirements of Pt. II of the Mortmain and Charitable Uses Act, 1888, as regards the execution of a conveyance for charitable purposes. The conveyancing law applicable to charities is in a state of confusion, and it may be hoped that it will soon be re-cast, though this could be done more suitably in an Act for the special purpose than by way of amendment of the Settled Land Act. It may be said that the provisions of Pt. II of the Mortmain and Charitable Uses Act, 1888, as subsequently amended, are designed to make the task of a solicitor who has to prepare a conveyance for charitable purposes like an obstacle race ; with skill and good luck he may get through, but there are many opportunities of falling by the way. If the provisions of the Acts are not complied with, the conveyance will as a rule be void, and not even a bare legal estate will pass, so that a subsequent purchaser who, on the face of the documents, appears to have obtained a good title, may find that he has not got the legal estate, and, even if he has acquired some equitable interest that his interest is liable to be defeated by prior equities of which he had no notice. It follows from these Acts, and from the Charitable Trusts Act, 1853, as subsequently amended, that, with certain exceptions (1) land cannot be conveyed by deed for charitable purposes subject to the reservation of a life interest ; (2) if land is given by will for charitable purposes, it must be sold unless the Charity Commissioners consent to its retention ; (3) if land is conveyed by deed for charitable purposes, it cannot be sold unless the Charity Commissioners consent to the sale. The exceptions, particularly as regards the third category, appear to rest on no rational basis.

Section 75 (1).—This sub-section provides that capital money shall be paid either to the trustees or into court at the option of the tenant for life. It has been decided under the repealed Acts that there must be trustees of the settlement in existence before the tenant for life can exercise this option. It is suggested that power should be given to a tenant for life to complete a sale or similar transaction and direct payment of the purchase money into court, even if there are no trustees in existence. A tenant for life will not often wish to do this, but there may be cases of emergency in which it would be desirable.

Reference may also be made to the following sections of the Law of Property Act, 1925 :—

Section 28 (3).—This sub-section gives trustees for sale of land power to partition the land. It is not quite clear whether a deed executed by the trustees under this sub-section is conclusive in favour of a purchaser, or whether a purchaser will have to see that the net proceeds of sale have, as required by the sub-section, become absolutely vested in persons of full age in undivided shares (whether or not such shares may be subject to a derivative trust), although it is expressly provided that a purchaser shall not be concerned to see or inquire whether any consent required by the sub-section has been given. It is suggested that a deed executed by the trustees under this sub-section might be made conclusive in favour of a purchaser, and that this might also be extended to a deed executed by the trustees for sale, declaring that the net proceeds of sale have become vested in a person absolutely, and conveying the land to that person discharged from the trust for sale. These would no doubt be large powers to give to trustees for sale, but similar powers are given to Settled Land Act trustees with the concurrence of the tenant for life (if any), and to personal representatives.

Section 34 (3).—This sub-section provides that a gift by will of land to two or more persons in undivided shares shall operate as a gift to the Settled Land Act trustees (if any) of the will, or, if there are no such trustees, then to the personal representatives upon the statutory trusts. It is suggested that it would be more convenient that such a gift should operate as a gift to the beneficiaries, provided they are not more than four, upon the statutory trusts, as in the case of a conveyance to persons in undivided shares.

Section 36 (1).—This sub-section provides that where a legal estate is beneficially limited to, or held in trust for, persons as joint tenants, the same shall be held on trust for sale, as if the persons beneficially entitled were tenants in common. It has been held in the cases of *Re Gual and Houlston* [1928] Ch. 689 and *Re King's Theatre* [1929] 1 Ch. 483, that this does not bring into operation the transitional provisions relating to undivided shares. Perhaps it does not matter much whether these provisions are to be applicable or not, but in order to make the point clear, it is suggested that it should be enacted, either that the transitional provisions shall apply, or else expressly that the land shall vest in the beneficial joint owners (even if they are more than four) upon the statutory trusts.

Section 45 (1).—This sub-section provides that a purchaser shall not make any requisition in respect of a document dated before the time prescribed or stipulated for the commencement of the title, notwithstanding that any such document is mentioned in an abstracted document. So far the sub-section replaces s. 3 (3) of the Conveyancing Act, 1881. Under that enactment it had generally been considered that there must be an exception in a case where a portion of the earlier document is incorporated in an abstracted document, or where the recitals in an abstracted document appear definitely to show that the earlier title was bad. The new sub-section contains a proviso that it is not to deprive a purchaser of the right to require production, or an abstract or copy, in the cases of (1) a power of attorney ; or (2) a document creating or disposing of an interest subject to which any part of the property is disposed of by an abstracted document ; or (3) a document creating any limitation or trust by reference to which any part of the property is disposed of by an abstracted document. It is submitted that the instances mentioned in this proviso are not or ought not to be exhaustive, while their enumeration will make it more difficult to imply any other exceptions to the general enactment contained earlier in the sub-section. The proviso for instance does not cover a case where parcels in an abstracted deed refer to a description or plan contained in an earlier deed, or to a case where the recitals in an abstracted deed distinctly suggest a flaw in the title, e.g., if a conveyance of land by A dated before 1926 and forming the root of title were to contain recitals of a will devising the land to A and B as tenants in common in equal shares, the death of the testator, the probate of the will, the death of B, without any recitals to suggest that B's undivided moiety had become vested in A.

Section 70.—This section provides that a release from a rent-charge of part of the land charged therewith does not extinguish the whole rent-charge but operates only to bar the

right to recover any part of the rent-charge out of the land released without prejudice to the rights of any persons interested in the land remaining unreleased and not concurring in or confirming the release. This section replaces s. 10 of the Law of Property (Amendment) Act, 1859, under which it has been held in *Booth* v. *Smith*, 14 Q.B.D. 318, that if in a release of part of the land charged the parties interested in the remaining part do not concur, such remaining part will become subject to an apportioned part only of the whole rent-charge, and in *Price* v. *John* [1905] 1 Ch. 744, that if the persons interested in the remaining part concur in or confirm the release it may render the remaining part liable to the whole of the rent-charge. It is suggested that these decisions should be incorporated in the present section. A more important point is that the whole of a rent-charge is still liable to be extinguished if the owner of the rent-charge takes a conveyance of part of the land out of which it issues. It is suggested that the section should be extended so as to provide for an automatic apportionment in this case.

Section 149 (6).—This sub-section provides (*inter alia*) that any lease at a rent for any term of years determinable with life shall take effect as a lease for a term of ninety years determinable after the death of the lessee or other person concerned by one month's notice. If taken literally, this leads to the remarkable result that a lease expressed to be granted for two years if the lessee shall so long live, takes effect as a lease for ninety years determinable by notice after the death of the lessee. It is suggested that this should be amended. Unless and until an amendment is made, the result can be avoided by following the course indicated in the sub-section and granting a lease for a term of years determinable by one month's notice after the death of the lessee, instead of granting it for a term if the lessee shall so long live.

Section 180 (2).—This sub-section provides that where there is or has been a vacancy in the office of the head of a corporation aggregate (in any case in which the vacancy affects the status or powers of the corporation) at the time when if there had been no vacancy any interest in property would have been acquired by the corporation, such interest shall, notwithstanding such vacancy, vest and be deemed to have vested in the corporation aggregate. If this enactment was necessary or desirable, it is suggested that it should be applied also to the case of a conveyance by a corporation aggregate during a vacancy in the headship.

In the Trustee Act, 1925, s. 37, contains provisions relating to the number of trustees to be appointed, which suggest that a trust corporation may be appointed to be sole trustee in a case where there was more than one trustee originally, but it is suggested that this should be expressly enacted.

In the Administration of Estates Act, 1925, the following sections may be referred to :—

Section 7.—This section confirms the previously existing rule of law that an executor of a sole or last surviving executor of a testator is the executor of that testator, but it is suggested that it should be enacted that the personal representative (whether executor or administrator) of a sole or last surviving personal representative (whether executor or administrator) should be the personal representative of the original testator or intestate. It is difficult to see any rational ground for allowing the executor of an executor, who frequently is not interested in the testator's estate, to be the executor of the original testator, while denying a similar right to the personal representative of an administrator, who in the usual case was appointed administrator on account of his interest in the estate of the deceased.

Section 36.—This section deals with assents in respect of legal estates in land and endorsements on grants of probate or administration. The provisions about endorsements are complicated and in some cases appear not to afford full protection. Sub-section (6) provides that a statement in writing by a personal representative that he has not given or made an assent or conveyance shall, in favour of a purchaser, be sufficient evidence of that fact, without prejudice to any previous disposition made in favour of another purchaser, unless notice of a previous assent or conveyance has been endorsed, and that a conveyance by a personal representative accepted on the faith of such a statement shall (without prejudice as aforesaid and unless notice of a previous assent or conveyance has been endorsed) operate to transfer the legal estate in like manner as if no previous assent or conveyance had been made. It appears from these provisions that a purchaser relying on such a statement and on the absence of an endorsement is not protected if there has been a previous conveyance or assent, although no notice thereof has been endorsed. The efficacy of the system of endorsements depends on the practice of a purchaser requiring production of every grant of probate or administration appearing on the title. If a purchaser's solicitor requires such production in all cases instead of relying on the examination of copies of wills and grants of administration at Somerset House or in a district probate registry, the expense of a purchase will be considerably increased. It may therefore be doubted whether the system of endorsements should be preserved. A person in whose favour an assent is made ought normally to obtain the deeds relating to the property comprised in the assent, and if he does not do so, he is guilty of negligence in the same way as a person who takes a conveyance of property from the owner but leaves the deeds in the possession of the grantor, and he cannot complain if the result of his negligence is that he is debarred in equity from setting up his claim to the property against a subsequent purchaser who has been misled by the deeds being left in the possession of the personal representatives. If there are no separate deeds relating to the property comprised in the assent, he can probably arrange for an endorsement to be placed on one of the deeds relating to the property retained by the personal representatives, as is usually done in the case of a sale of a portion of the property comprised in a deed, or he might be given a statutory right to have this endorsement. The risk incurred by a purchaser who takes a conveyance from personal representatives who produce the deeds, on account of a possible assent is not essentially different from that incurred by any other purchaser on account of a possible previous conveyance by the person who conveys to him. Sub-section (7) of this section, in effect, provides that a purchaser is safe in taking a title from the person in whose favour an assent is made without inquiring as to his title to have the assent made in his favour. Sub-section (11) provides that this section shall not operate to impose any stamp duty in respect of an assent. It would be more satisfactory if it had been provided that in favour of a purchaser an assent under hand only shall be deemed not to be liable to stamp duty, but perhaps the Revenue Authorities would object to an enactment to this effect. As it is, unless an unstamped assent is adjudicated (which in practice it seldom is), the purchaser ought perhaps strictly speaking to investigate the equitable title of the person named in the assent to satisfy himself that the document was not in fact liable to stamp duty.

Section 39 (1) (ii).—This paragraph gives personal representatives all the powers conferred on trustees holding land on trust for sale (including power to overreach equitable interests and powers as if the same affected the proceeds of sale). The effect of this is to give the personal representatives greater powers than the deceased had. If for instance a person is the owner of land in fee simple subject to an annual sum charged in equity on the land, his personal representatives can sell the land free from the charge and receive the purchase money, although the deceased could not have done so. If the suggestions made earlier in this paper as to dealing with land subject to charges were adopted, it would not be necessary to give these extended powers to personal representatives. As it is, these powers may be dangerous both to the persons entitled to the charge and to the personal representatives. In the case mentioned, the land can be conveyed by the personal representatives under s. 1 (1) of the Law of Property (Amendment) Act, 1926, subject to the charge, and then the personal representatives can deal with the purchase money as part of the estate of their deceased, but if for any reason the conveyance is not expressed to be made subject to the charge, although the personal representatives may not have intended to overreach the charge, it will apparently be in fact overreached. If the personal representatives then deal with the purchase money as part of the estate of their deceased they will be committing a breach of trust for which they will be liable to the person entitled to the benefit of the charge, while that person will have lost his rights against the land, and will only have a personal remedy against the personal representatives.

Under the Land Charges Act, 1925, s. 10 (1) D (ii), restrictive covenants have to be registered if they are to be enforceable against a purchaser from the covenantor. It is suggested that this should be made unnecessary in a case where the covenants are contained in a deed containing a conveyance of the legal estate.

It is not suggested that these proposals are all new or that other proposals might not equally well have been made, but it is hoped that when the further revision of the law of property comes under consideration some of the suggestions contained in this paper may be found useful.

The PRESIDENT thanked Mr. Snow for the light entertainment he had provided !

Mr. R. ARMSTRONG (Leeds) said that it had never occurred to the authors of the measure that the whole trouble could be wiped away by one provision : that in all settlements of land there should be an over-riding trust for sale, vested in the trustees of the settlement. The trustees were very suitable people—

far better than tenants for life. Settlements were more and more being prepared in this form, so that what should have been done by the Act was being done by deed. The custom would come one way or the other. He referred to the article on this subject which appeared in THE SOLICITORS' JOURNAL of 23rd September, p. 651. It was not a good thing to appoint people to whom the principle of trusteeship could not be applied because they were not, properly speaking, trustees. The Property Acts had solved a few problems, but they had also raised questions to which the answer would never be known until they had been brought before the courts—and probably not then!

Mr. J. B. LEAVER (London and Blackpool) read the following paper:

BUILDING SOCIETIES AND THE LEGAL PROFESSION.

If there is one subject which finds perennial interest in the correspondence columns of the legal press, it is the subject of building societies and their smaller sins, and if it were to be assumed that those letters, from solicitors in various parts of the country, which from time to time appear, complaining of the actions of societies, were typical of the feeling of the profession as a whole, I think one would be justified in considering that there was an inadequate appreciation, not only of the functions and place of building societies in the national economic life, but also of the fact that building societies are, as I believe they are, most beneficial institutions so far as the legal profession is concerned.

It is, of course, difficult to generalise upon these letters, but if one could classify them, they would, I think, fall into one of four categories: Complaints (*a*) that clients have been weaned away from a solicitor to the solicitor acting for a building society; (*b*) advertising of reduced mortgage charges; (*c*) advertising of reduced conveyancing charges; and (*d*) exorbitant interest charges on mortgages and non-publication of interest terms.

I have been associated, for many years, not only with building societies but with the "Building Societies Gazette," which is the national organ of building societies, and I would wish to put before you as representing the profession as a whole, and without in any way wishing to dogmatise, some considerations which, in my view, must be in mind if one is to understand building societies, and some of the problems which they undoubtedly provide for the legal profession. I would, with your permission, first submit two broad propositions for your consideration, namely:—

(1) That building societies are of great benefit to the community as a whole; and

(2) That they are beneficial to the legal profession.

Afterwards, I should like to consider briefly—

(1) Some of their general problems; and

(2) Some of their problems affecting peculiarly the interests of the profession.

First, then, as to proposition (1).

I think there will be no two views, in this hall, that institutions which encourage thrift and home ownership are of incalculable benefit to the community, particularly at this stage in the national history, when any movement which makes for stability deserves appreciation. It would not be proper for me, here, to enter upon a discussion of the respective merits and demerits of collectivism and individualism, but building societies are, structurally, a combination of the virtues of both. Building societies group men together in their savings, in order to provide the capital wherewith their fellows may themselves take the first step in developing their own individuality, by satisfying their own first need of a home, and thereby setting themselves upon the path of disciplined saving, with the prospect that they, ultimately, in turn, will provide the capital to help others along the same road.

As men, relying upon individual effort for our livelihood, I take it that we are not slow to appreciate individual effort, wherever and whenever it may be found, and it is to me refreshing, in days when the State is doing so much, and is, in some quarters, expected to do so much more, in aid of its citizens, to dwell on what men have done for themselves, unaided and unsubsidised, with resources provided by themselves, operated by machinery devised and controlled by themselves, in order to achieve their own, and their fellows' economic advancement, through the medium of their own need of a home.

The true value of an institution can only be assessed when one tries to envisage what the world would be without it, and what, I ask of you, would have become of the terrible problem of the shortage of houses in post-war years, if it had not been for the help afforded by building societies? I say nothing of what building societies did prior to the war, because I am content to rest my case on their work during a time of stress, well within the recollection of all.

When the war ended, it was thought that there existed a shortage of houses to the extent of about 1,000,000 in England and Wales. From March, 1919, to March, 1932, 1,861,267 houses have been built in this country, and yet there is still an estimated shortage of a million houses. The reasons for that continued shortage are known, and may be shortly stated to be (*a*) an under-estimate of the housing need in the first instance, (*b*) a shrinkage of the size of the family unit, and (*c*) the ceasing of emigration.

Of those 1,861,267 houses, 647,859 have been built by local authorities, and the balance of 1,213,408, by private enterprise. Of those 1,213,408, one-third, approximately, have been built with State assistance, and two-thirds without State assistance.

During that time, building societies in this country have advanced on mortgage no less a sum than £708,383,879, and whilst the whole of that amount has not been advanced on new dwellings, and, it may be, that one property has been the subject of more than one advance, still it will be seen from this figure what a truly colossal contribution has been made to post-war housing development by building societies.

During 1932, the amount advanced on mortgage was £82,142,116 in respect of 159,135 advances, giving an average advance of £516, and if it were true that this average had persisted throughout the post-war years, then building societies, since the war, would have made not less than 1,400,000 advances on property. Not only so, but the total number of borrowers through building societies, at this time, is nearly 900,000.

The value of this service to the community will be realised when the charge of post-war housing upon public funds is considered. The total of that charge, in the shape of initial expense, and subsequent depreciation of property, has never been, and, I believe, cannot be, estimated, but the following may give you a partial view.

Under the Housing, Town Planning, &c., Act, 1919, and the Housing (Additional Powers) Act, 1919, three forms of subsidies were provided for houses built by local authorities, public utility societies, and private enterprise respectively. In the first, the State undertook to cover the annual loss based on a loan repayment of sixty years, with a local authority contribution limited to a special rate of one penny in the £. In the second, the State undertook to cover 30 per cent. of the charges for interest and redemption of the capital cost of approved schemes. This percentage was subsequently increased to 50 per cent. to 1927 and 40 per cent. thereafter. As to private enterprise, lump sum subsidies were first given of £130-£160 per house, later increased in 1920 to £230-£260 per house.

In 1921, however, the cost to the community was so heavy that further subsidies were suspended, and the Government programme was limited to houses already built by local authorities, and to houses built by private enterprise completed by a prescribed date.

As a result of this expenditure, 213,821 houses were provided from 1919 to 1929, being 170,090 by local authorities, and 43,731 by private enterprise.

By the Housing, &c., Act, 1923, a yearly subsidy of £6 per approved house for twenty years was granted, later increased by the Housing (Financial Provisions) Act, 1924, to £9 (£12 10s. in agricultural districts) for forty years. These subsidies were subsequently reduced to £4 and £7 10s. respectively (£11 in agricultural districts). At the same time, the maximum liability of the local authorities was reduced from £4 10s. to £3 15s.

As a result of this expenditure, 725,209 houses were provided to 1929, being 357,679 by local authorities and 367,530 by private enterprise, and up to 1928 nearly nine millions of pounds had been paid in subsidies under these two last-mentioned Acts.

In addition to this expenditure on subsidies, the housing loans raised by local authorities were estimated by the Ministry of Health to total on the 31st March, 1930, no less than £400,000,000.

I hope that I have not wearied you with too many figures, which figures I have quoted in order to demonstrate (A) the immense cost which the community has had to bear, and will have to bear in the future in respect of providing adequate housing; (B) that even what has been achieved could not have been achieved without the aid of building societies, because it is clear from the amount of their loans that they have provided the bulk of the funds for the purchase of subsidised and unsubsidised houses; (C) that building society operations, in aid of housing, have laid no charge on the public purse. In fact, now, by the Housing Act, 1933, all subsidies for ordinary building have been abolished, as a direct consequence of building society money being made

available to investors, public utility societies and others, on the favourable terms mentioned in the Act, in order to provide a sufficient number of rented houses.

So far as building society members are concerned, they have done their share in solving the post-war housing problem. They have done it, by individual sacrifice, bearing themselves the cost of providing their own houses, and bearing any subsequent depreciation. I believe, and I think we all believe, that citizens are all the better citizens, by reason of having a financial stake in the country, as some return for the political power which they enjoy under a universal adult franchise, and I think we should all agree, that in bearing their share in the general depreciation which has occurred in all real property during these last years, the new owners of property, who have come into existence almost in their millions, as the result of building society operations, have been taught lessons as valuable collectively, as they have been unpleasant individually.

If to this be added the fact that all these numerous members of societies have been set on their way as disciplined savers, taking the first step in accumulating that capital, which has been, in the past, and, I believe, still more in the present, may be, the ultimate source of business capital, I think it will be agreed that the value of the building society movement is socially beneficent, beyond all assessment.

Secondly, then, as to proposition (2).

I have taken deliberately the social aspect of building societies, before considering the question of the financial benefit which they confer upon the legal profession, as the profession in the past has not been slow to show that it was prepared to place public benefit even before individual profit. If, however, consideration be given to the operations of building societies, it will be seen that they constitute, in the course of those operations, not of small benefit to the legal profession as a whole.

As I have pointed out, since the termination of the war, building societies have advanced in this country the sum of over £700,000,000 on dwelling-houses. Many of these advances were, of course, made without an accompanying conveyance, but, on the other hand, the majority of these advances were accompanied by such conveyances, from which fees were drawn, in respect, not only of acting on behalf of the purchaser, but also on behalf of the vendor as well. Building society advances commonly range about 75 per cent. of the value of the property. By the aid of insurance company guarantees, these may range up to 90 per cent., or by aid of builders' deposits even up to 95 per cent., but, on the other hand, they may range considerably lower than 75 per cent., and whilst accuracy in this matter is impossible, it is, I think, not an unfair assumption to make, that the amount advanced was advanced on property of a total capital value of not less than £1,000,000,000.

The scales of mortgage charges to building societies, are, of course, much less than the scale authorised by the Solicitors' Remuneration Act. Some scales provide for charges up to £1,000, of almost 1 per cent., whilst some are much lower, but I think that if a scale of ½ per cent. were taken, the case would certainly be understated rather than overstated, and on this basis, building societies have, in post-war years, paid legal charges in respect of their mortgages of not less than £3,500,000.

In addition, I think it would be understating rather than overstating the position, if the conveyancing charges attendant upon these transactions were averaged out at 1 per cent. (setting off the fact, that in many cases there were charges for both vendor and purchaser, against the cases where there were mortgage charges only), and if this were true, then building societies have been directly responsible for producing conveyancing fees, during the post-war years, of not less than £10,000,000, or a sum total, of fees, of £13,500,000.

Even if liberal allowance is made, as it must be made, for error, in a matter where accuracy is impossible, a very, very substantial sum remains, and my purpose is served in drawing the attention of the profession to this sum.

The matter, however, does not end there. With slight exceptions, the tide of advances of building societies has risen steadily year by year from nearly £16,000,000 in 1919 to £90,000,000 in 1931, and what is a figure of £90,000,000 in 1931 will probably become £100,000,000 in 1933, and so on, in regular progression. Even if it be said, that with the completion of over a further million of new houses in the country, this increasing tide of advances will be stayed, it is to be remembered that, at the moment, not more than one house in five is the subject of a building society mortgage, and therefore, building societies look with hope to the future, which, they contend, holds for them an adequate and ever-increasing field for their operations, and it would seem that their present operations and their publicity will, in the years to come, provide them with increasing and ever-increasing scope, to the similar increasing benefit of the legal profession. I hold the view that the next five years will probably see, especially with a static population, which, it is estimated, will be reached in 1940, a cesser in the erection of new houses on the scale with which we are acquainted to-day, but even when that stage is reached, there is still to consider the four out of every five dwelling-houses which are not yet the subject of a building society mortgage. Whether we know it or not, there has been nothing less than a silent revolution, in this country, with respect to persons seeking to be owners, rather than tenants, of houses; a social revolution as potent, and as significant, as the revolution which occurred during the last century, when the Companies Acts made available aggregations of capital for industrial enterprise. The revolution which is proceeding now, is by no means spent in force; rather it seems to be gathering force, and even if due allowance is made for the fact that a large section of the community either by its low standing, or that it is composed of mobile labour, is not a fit field for building society enterprise, there is yet remaining a more than adequate field for building society progress in the future.

The matter, however, does not even rest there. The disciplined saving, which property owners are undergoing in their building society life, is, together with other forms of thrift, gradually, very gradually, building up a large section of the nation as small capitalists, and that process will, I contend, as a result mainly of building society operations, but helped by all other thrift tendencies, go on increasingly, until a large section of the labouring population in this country, which probably comprises nine-tenths of the nation, becomes the owner of masses of small capital.

If the statistics relating to the estates of persons dying be looked at, this process can already be seen in operation, as is shown by the following figures.

In this country in 1908, that is twenty-five years ago, the number of deaths was approximately 680,000. Of that number, only 83,206, that is one person in eight, left estates of any value, and of these estates, 17,626 were of less capital value than £100 net. Thus only 65,580 estates (that is approximately one in every ten persons dying) were of more than £100 net in value.

Take the position of Great Britain and Ireland for 1922, fourteen years on from 1908. In 1922, the number of persons dying—over twenty years of age, was approximately 442,500 (I give number of persons over twenty years of age as excluding children, and giving a truer picture) but the number of estates in that year sworn for Inland Revenue purposes as of any value was only 105,596, that is, one in every four persons dying, and of these estates, 28,504 were under £300 gross value, 16,101 were exceeding £300 gross value but under £500 gross value, and 25,546 were between £100 and £500 net value. Thus over 70,000 estates (two-thirds of the whole number of estates of any value, and less than one in six of the total number of persons dying in that year) were under £500 in value. To put the matter in a simple way, three out of every four people dying in that year, left worthless or practically worthless estates, whilst of the remaining fourth, two-thirds of the estates were of the capital value under £500.

Since that year, there has been, in spite of all adverse circumstances, a steady progression in the number of estates over £100 in value, until in 1932 (ten years later) the total number of estates sworn as of value had risen to 130,100, and of these, 31,005 were under £300 gross value, 19,659 were exceeding £300 gross value, but under £500 gross value, and 32,771 were between £100 and £500 net value. Thus 83,500 estates (not quite two-thirds of the whole) were under £500 in value.

In addition, the increasing real wage rate, which was in 1932 15 per cent. over the 1914 level, despite all adverse circumstances, is bound to have a striking effect upon the number of estates of deceased persons which will be of value in the future.

The moral of this is obvious, and I need not stress the amount of work which is, and will be, placed in the hands of the legal profession, if this country were to become, as it promises to become, a nation of home owners and small capitalists.

What I have said above becomes all the more clear if it is remembered what would be the position if there had been no building societies in this country operating during the post-war years. The housing problem had to be met, and presumably the only way in which it could have been met was by the local authority building houses for tenants, which would have produced no conveyancing work at all, or by private purchase, aided by private mortgages, the supply of which, I think you will agree, would neither have been satisfactory, nor in any way adequate, to meet the need, and to-day it is not without significance that conveyancing work

is most active, when and where, building society funds are most freely available.

1. *Some building society problems.*

It is not my purpose, in this paper, to go into all, or even many, of the problems which face building societies to-day, but some of these general problems do affect the legal profession. There are, to-day, in this country, no less than 1,014 building societies, most of them small, and they have total assets of £469,000,000, with total mortgage assets of £388,000,000. This was an increase, on the year, of £50,000,000 and £28,000,000 respectively, and during last year approximately 160,000 new advances were made, so that, during last year, on the average, 436 persons per day joined the ranks of home owners through the facilities offered by building societies. These are large figures, but that they have not reached their peak is shown by the fact that in America, where the building society movement has wider ramifications than it has in this country, in 1931, the total assets of the building and loan societies were 8,828,611,925 dollars, or roughly £2,000,000,000.

Of these 1,014 building societies, 370 societies are affiliated to the National Association of Building Societies, which represents £449,000,000 of assets, the remaining 644 societies representing only £21,000,000 of assets, and thus the National Association represents 95½ per cent. of the total assets of building societies in this country, and can, in some degree, bring about unity of action and advice in the control of building societies in this country.

Building societies, however, have suddenly sprung from local associations into national institutions, and their operations have overlapped to such a considerable extent, that undercutting in terms has taken place, perhaps in some cases to the advantage of the clients of solicitors, but in other cases, to the detriment of societies, and this is a matter which undoubtedly will have to engage attention in the future, either by way of area agreements, laying down tariff terms, or by stronger control at the centre, or maybe, by a system of unification on the American model, provided by the Federal Home Loan Bank Act which was enacted last year by the American Congress.

Another problem is the maintaining of an adequate liquidity in mortgage assets, especially in respect of those properties which have received advances of 90 per cent. or more, supported by builders' cash deposits, or insurance company guarantees, and also of seeing that properties in possession are kept at a reasonably low figure. At this time, as against total mortgage assets of £388,000,000, the amount due on properties in possession, added to the total arrears, is less than £1,000,000, i.e., only 5s. in every £100 of mortgage assets.

2. *Some Building Society problems affecting the Legal Profession.*

As I have said before, the complaint of members of the legal profession with respect to building societies seems to be directed to diversion of clients to building society solicitors, or to advertising of reduced mortgage charges, or to advertising of reduced conveyancing charges, or to exorbitant interest charges on mortgage, and non-publication of interest terms.

With respect to—

(a) *The diversion of clients to building society solicitors.*

There is, of course, no obstacle to building society officers recommending clients to go to the recognised solicitor to the society, but there is an alleviation of this position. Prior to the war, when building society operations were comparatively small, solicitors were appointed to building societies who had the sole control of work emanating from the society, but with increased operations, this position has now been altered in many societies, and the position now largely obtaining is the system which was first introduced by, I believe the largest society in the country, namely, the Halifax Building Society, of having a chief solicitor, and a panel of solicitors of approved standing, who are permitted to act in the preparation of mortgage deeds of their own introduction, and under this system, the chief solicitor for the building society only acts in those matters which are unattached, or in those general matters, on the instructions of the society, which do not directly concern outside clients. Seeing that the operations of societies are constantly increasing, with the consequent necessity for securing the goodwill of solicitors at large, in order to secure their mortgage introductions, this system, in my opinion, is one which is bound to grow, and with its growth, one of the chief complaints of solicitors against societies will, it seems to me, pass away.

(b) *The advertising of reduced mortgage charges.*

I think it must be agreed that this is a matter over which the Societies have entire jurisdiction, and it must be remembered that the rr. 3 and 6 of the Solicitors' Remuneration Order provide for reduced mortgage charges where a solicitor is acting for mortgagor and mortgagee as is the case in building society mortgages.

"Rule (3). Where a solicitor is concerned for both mortgagor and mortgagee he is entitled to charge the mortgagee's solicitor's charges and one-half of those which would be allowed to the mortgagor's solicitor up to £5,000, and on any excess above £5,000 one-fourth thereof.

"Rule (6). Where a conveyance and mortgage of the same property are completed at the same time and are prepared by the same solicitor, he is to be entitled to charge only half the above fees for investigating title and preparing the mortgage deed up to £5,000, and on any excess above £5,000 one-fourth thereof in addition to his full charges upon the purchase money and his commissions for negotiating (if any)."

Even here, there is ground for hope, because more than one society, to my knowledge, have attempted to gain the goodwill of solicitors by increasing their mortgage charges to a point when it could not be disputed that they were distinctly profitable, even if there was no conveyance attendant upon the mortgage transaction.

It must also be remembered, that in this matter, solicitors might be well advised not to give the societies any cause to engage their own staffs of solicitors on a salaried basis, with the consequent delicate questions which might arise by their so doing, as illustrated by the decision in *Galloway* v. *Corporation of London*, L.R. 4 Eq. 90. This is a matter which the profession might well watch carefully.

(c) *The advertising of reduced conveyancing charges.*

In connection with this complaint, I notice that in a recent letter in the press, building societies were blamed for the advertising of "reduced conveyancing charges," "no legal fees," etc., which are so often seen on hoardings and in newspaper advertisements in connection with new building estates, but it is well to understand that building societies are in no way responsible for these advertisements. These reduced conveyancing charges are the result of a compact between the builder and the solicitors to the estate. The work is of a mass production character, and the charges between the solicitor and the builder are presumably fixed on a scale which is commensurate with the work involved, having regard to the large number of transactions on a particular estate which are almost an exact repetition of one another. It is not easy to see, therefore, how this matter can be remedied, because it is apparent that the purchase of new houses is not only materially assisted, but is indeed made possible, only because a low cash deposit is accepted from the purchaser, generally in the neighbourhood of £25, and that, after paying this low deposit, the purchaser is absolved from legal costs and streetage charges. Often, a modern purchaser does not lay as much stress on the capital cost of the house he is purchasing, as upon the term of years and the weekly repayment attendant upon his purchase price, because his capital is extremely small, and he is largely making the purchase on the strength of his income. He is, consequently, quite unable to pay legal costs separately, or to bear the onset of streetage charges. These amounts, therefore, are both settled for him by the builder, who makes his own roads, and is under contract with his solicitors, who act not only for him, but also for the purchaser in the matter of the conveyance and the mortgage, at a fixed fee, which, presumably, bears a profitable resemblance to the amount of work involved in the transactions covering the whole estate. Naturally, these facilities are advertised, but so far from being blamed for this, building societies should be praised, because, in fact, they are advancing the money, not only for the purchase of the houses, but also for the legal costs and the streetage charges, and to that extent are actually benefiting the profession, not out of their income, but out of their capital funds.

Complaints, I am aware, have been made, that the practice of stipulating, in a contract, that the vendor's solicitor shall act for the purchaser in the matter of the free conveyance which is given to the purchaser is contrary to Section 48 of the Law of Property Act, 1925, but the opinion of the Council of 9th December, 1926, is that if the vendor is prepared to give a purchaser a free conveyance, the purchaser cannot employ his own solicitor except at his own expense.

This is not a problem which arises from building societies, but, having regard to the fact that building society loans are being made on new estates, where free conveyances are being given, I am not sure that in some minds a certain responsibility for the prevalence of this practice has not been imputed to societies.

With respect to the practice which some years ago appeared in some building society prospectuses of reduced conveyancing charges attendant upon mortgage transactions, a matter to which Mr. Walter G. Beecroft drew the attention of The Law Society at the meeting at Bournemouth in 1929, and a memorandum on which was prepared by the Scale Committee

of The Law Society in 1930, I am happy to think that some societies have now discontinued this practice, which I must confess, I regard as wholly undesirable, and I believe the dominant factor in inducing societies to discontinue this advertising has been the desire to gain the goodwill of the legal profession, which goodwill, as I have said before, societies must increasingly seek as their operations become more and still more widespread. I look forward hopefully, therefore, to the time when the few exceptions still existing will have seen the advisability of discontinuing this advertising, and of leaving the question of the amount of the conveyancing fees to the ordinary local scale obtaining in any particular district, and will agree with the profession that conveyancing fees are just as much a matter of domestic concern to the profession as the mortgage fees are to the societies.

I think the legal profession will be well advised, having regard to the present and prospective work of building societies in this country, to concentrate upon this one point, believing, as I do, that other questions are gradually solving, and will ultimately entirely solve themselves, to the satisfaction of the profession.

(d) *Interest Rates.*

And lastly, with respect to the complaint of exorbitant interest rates being charged by societies, and also of the non-publication by some societies of their interest rates, I would remind the profession that whatever may have occurred in isolated—I believe very isolated—cases, building societies are now working on a usual lending rate of 5 per cent. interest, and the fact that this rate has been so quickly, and almost universally adopted by societies, following on the decrease in interest rates in Government Stocks, is, I think, evidence of the disposition of societies to give to their members the advantage of the very lowest possible interest rates, and to do so, throughout all the societies, and in all parts of the country. Quite apart from disposition, however, competition between societies for business is, I believe, now an adequate guarantee in this matter.

I have taken a good deal of time in bringing before you many figures with relation to building societies in this country, and I have done so of set purpose, because I feel that in this country there is at this moment in progress a revolution, silent, yet tremendous, with respect to the ownership of property, caused largely by building societies, and that the legal profession, concerned as it is with the efficient transfer of real property, would do well to take a lively interest in this, believing further, as I do, that in building societies the legal profession has an institution which is capable, not only of great social benefit, but one which will be increasingly of material benefit to the profession as a whole, and for that reason I should deplore, either now or in the future, the existence of any spirit, other than that of the utmost goodwill and understanding, between the building societies of this country and the legal profession as a whole.

Mr. ARMSTRONG (Leeds) said he came from Yorkshire, the home of building societies, which were acknowledged to be a great national institution and a great movement. They were, however, engaged in what was called in financial circles "borrowing short and lending long." It was an axiom of finance that great caution and great skill must be exercised in this process. The smallest failure of building societies would gravely disturb public confidence. The question of mortgage scales was primarily one for the solicitors, who were doing the work at reduced fees. The scheme had been established for many years and was working very well. The building societies had always met the solicitors in a friendly spirit. He said that there need be no apprehension about the advertising of fees, but in the matter of the advertised conveyancing scales The Law Society was partly concerned, because the scale was considered to be a matter between the solicitor and client with reference to the scale laid down under the Remuneration Orders. Even by the building societies the practice of advertising scales was deprecated, and it was not done by the larger societies at all. It was a mischievous practice. (Hear, hear.) There was, however, a great deal of hope in the outlook. The Council had taken the matter up with the National Association and the desire of solicitors that these conveyancing scales should not be published in prospectuses had largely been fulfilled. The National Association, however, did not have jurisdiction over all building societies.

Mr. J. A. HOWARD-WATSON (Liverpool) asked how many thousands of mortgages had been foreclosed because people had been induced to buy houses when they could not really afford to do so. A poor man was encouraged to take a house and to believe that he was getting something cheap, but he was not. The price charged was not really an economic one, but a price which took into consideration all his charges. When he sold out, he got a very small proportion back and was apt, therefore, to throw the burden on to the Society.

The panel of recognised solicitors, to act in such mortgages as they introduced themselves, was not altogether a concession to the solicitors; it was made for the purpose of getting mortgages and conserving the building societies' own business. If the Council had public opinion behind them and took the matter up, it could make it as disgraceful to under-charge as to over-charge, by administering severe reprimands and eventually suspending the offender. If good work was to be done, good wages must be paid for it. The object of the building society was not to persuade a poor man that he was getting something for nothing.

The PRESIDENT pointed out that Mr. Leaver had taken great pains to verify his statistics, and had stated that only 5s. in every £100 was thrown back on the building society.

Mr. G. A. C. PETTITT (Birmingham) declared that undercharging encouraged all parties to the transaction to go to the building society's solicitor, and the purchaser was thus deprived of that protection which he might have had if his own solicitor had acted independently. In his experience, recently, a solicitor had acted for the building owner, the building society, the private purchaser and the second mortgagees. When the second mortgagees had tried to sell, the vendor, who was Mr. Pettitt's client, had been called upon to make certain inquiries and had found himself bound by any knowledge which had been in the possession of his solicitor; he had very nearly been placed in a most undesirable position.

Mr. A. W. DREW (Newport, Isle of Wight) declared that, to his knowledge, one of the largest of the building societies declined to hand over the deeds when a mortgage had been paid off, saying that it must wait until the next meeting.

Mr. H. J. H. SAUNDERS (Evesham) said that all solicitors recognised the good work done by building societies, but regarded the question of building societies' costs and general undercutting as a pressing one. He was expressing not merely his own opinion, but also that of a large number of country solicitors belonging to the Worcester Law Society. A young solicitor who tried to keep up the traditions of the profession gradually found himself standing alone. He had either to do building society work or to lose his clients. Mr. Saunders's own firm had stayed out for years, but had had to come in at last as they were losing work. They received £2 12s. 6d. for the conveyance—a scandalous sum. The Council was the body to remedy the situation. The stockbrokers had already taken action. The Council should prepare a scale showing an ordinary fee where the solicitor acted for one party and a reduced fee if he acted for more than one; and stating also a right and reasonable charge when the work was only that of filling in forms. The Council already had the necessary power under the new Solicitors Act to make rules for the government of the profession. It ought to do something to save the men who wanted to do the right thing but were being brought down to doing conveyancing for £2 12s. 6d.

Mr. H. B. BINGHAM (London) said that the building societies made the rule about not handing over the mortgage deeds on account of the difficulty of providing for the risk of executing the statutory receipts. ("No, no.") In his experience the societies always handed over the deeds, retaining the mortgage, which they would send as soon as they could.

Mr. W. T. DE B. BARWELL (Seaford) said that he had always had the mortgage endorsed and handed over immediately. There was no need to wait. The building society with which he had had dealings had passed a resolution authorising the secretary to affix the seal without a special meeting.

Mr. C. F. PAWSEY (Barnsley) remarked that this must be the solitary exception.

Mr. ISIDORE KERMAN said that in London the larger societies had passed a resolution deciding not to appoint any further solicitors. There was a panel, but it could not be extended.

Mr. W. M. PHILLIPS (Lincoln) said that in his dealings with the Halifax Building Society he had always been able to get the deeds by return of post.

Mr. H. L. C. BARRET (Slough) said that the solicitor generally acted for the vendor and gave a purchaser a free conveyance, so that the purchaser had no remedy if things went wrong. Often, when the mortgage was paid off, there was found to be no abstract of title.

Mr. M. S. INGLEDEW (Cardiff) said that the building societies had been most astute in advertising—fortunately for the few solicitors who were associated with them and gained the full benefit of the advertisements. In his experience the reduction of costs was wholly unnecessary. His firm acted for a railway company which supplied large sums for their employees to buy houses. The workmen in every case paid the full scale charge for the conveyance or assignment, and a greatly reduced charge for mortgage. Without hesitation he declared that the encouragement given by these advertisements to the poor man to go to building societies was a red herring drawn

across the trail—(hear, hear). People were induced to incur the risk of borrowing money to buy a house, and the few pounds they saved were neither here nor there as far as their pockets were concerned. The advertisements of reduced charges were not for the benefit of poor people but for that of the building societies, who knew well they were an attraction. They might be compared to the advertisement of a draper who reduced his prices from 1s. to 11¾d. The small solicitors up and down the country were in difficulty to-day from the undercutting that was fostered by these advertisements, and the solicitors' profession was not able to counter it unless the President could persuade the Council to deal with the matter on the lines suggested, and lay down the principle that undercutting was as much an offence against the profession as overcharging.

Mr. A. SEWART (Lancaster) said that he spoke as a country solicitor from a district where they had suffered most severely, and he would like to support Mr. Saunders. It was not a question of undercutting only; undercutting was an abominable procedure, but far more serious was the interference with the practice of other solicitors. He knew what the cause of the trouble was and how it worked, but he would not like to stand up in a public meeting and recount what he knew. He would be happy to supply the information to the Council, and was certain that the ordinary practitioner had a great deal to complain of from the work of the building societies. He did not blame the building societies; he agreed that their work was very valuable, but he blamed the way things were done. He did not think the societies knew what was done, and believed that if they did know they would be the first people to seek a remedy. Therefore solicitors ought to urge that representations should be made to the societies so that these troubles might be removed. In his town there was a local scale of costs drawn up by the local Law Society, and their aim was that every member of the profession in the district should be a member of the local Law Society and stand by that scale, which had been agreed to by the majority. Nevertheless, one of the leading building societies was employing as its principal solicitor a man who was not a member of the local Law Society, for the reason that he refused to be bound by the scale which the rest of the members thought fair for the profession. Such a position could not be justified. This man had for years been undercutting his own profession, and yet he was representing the principal building society of the district. It had been found by experience that having a panel of solicitors did not cure the trouble. Instructions had been issued to the agent that, whenever an application was made for a mortgage, the agent should show the list of solicitors to the applicant, so that he might choose. This was very fair, but it all depended on the agent. There would be no remedy until the panel of solicitors contained the name of every respectable practitioner and the business went in rotation.

THE PRESIDENT said that if Mr. Saunders would send in any remedial suggestions he gave his personal assurance that they would be considered, and, if feasible, something would be done.

Mr. LEAVER admitted that he was an admirer of building societies; he thought that they were of great benefit to the legal profession and capable of being made a still greater benefit. He hated cut fees; they tended inevitably to shoddy work, quite apart from their unfairness. They meant that somebody had to do more than his fair share of work, putting right something that ought to have been right from the first. But who was to say what was a cut fee? £2 12s. 6d. on the face of it appeared to be a cut fee, but the fact that the solicitor acted in the transaction for more than one party might put a different complexion on the matter. What could The Law Society do? It had not compelling powers. (A member: "It has.") He thought that his facts about arrears showed that improvident purchasers were being created in negligible proportions only. The building societies had special bureaux to sift out those whose financial standing did not justify purchase of a house. Moreover, the Housing Act of 1933 made available rented houses sustained by building societies' money. He had not met the difficulty of refusal to surrender a mortgage when paid off, but it could quite easily be met if the building society passed a resolution authorising the Secretary to seal a vacated mortgage and hand it over on payment.

The meeting then terminated with the customary votes of thanks to the Berks, Bucks and Oxon Law Society, and Mr. Gamlen and his helpers; to the Vice-Chancellor and Heads of Colleges and Halls; to the Mayor and Mayoress; to the Warden and Fellows of All Souls and New College; to the President of Magdalen College; to the Dean and Chapter of Christ Church; to Dr. John Johnson, of the Clarendon Press; to Sir William Morris and Morris Motors, Limited; to the Members who had contributed papers; to the committees of the various clubs which had admitted members and their ladies during their visit, and to the Chairman.

Obituary.

MR. J. DICKINSON, K.C.

Mr. James Dickinson, K.C., O.B.E., of Essex-court, Temple, died at a nursing home in Dundee, on Wednesday, 4th October, at the age of forty-seven. Mr. Dickinson, who was called to the Bar in 1920, was a member of the Inner and Middle Temples.

MR. E. F. BARKER.

Mr. Elliot Francis Barker, B.A., solicitor, partner in the firm of Messrs. Wontner & Sons, of Bedford Row, W.C., Solicitors to the Commissioner of Metropolitan Police, died on Wednesday, 27th September, while on a holiday cruise. Mr. Barker was educated at Haileybury and Trinity College, Cambridge, and was admitted a solicitor in 1896. He was sixty-two years of age.

MR. S. BRUTTON.

Mr. Septimus Brutton, solicitor, of Southsea, head of the firm of Messrs. Hobbs & Brutton, of Portsmouth, died on Friday, 29th September, at the age of sixty-four. Mr. Brutton was admitted a solicitor in 1891.

MR. T. EDMONDS.

Mr. Thomas Edmonds, solicitor, of Totnes, Devon, died recently at the age of seventy-nine. Mr. Edmonds, who was admitted a solicitor in 1875, practised in partnership with his son, Mr. T. H. Edmonds, as Messrs. Edmonds & Edmonds. He was for many years County Court Registrar for Paignton and Totnes and Deputy-Coroner for South Devon.

MR. F. J. SYKES.

Mr. Frank James Sykes, solicitor, of Great Marlborough-street, W., died at his home at Hampstead on Wednesday, 4th October, after a long illness. Mr. Sykes was admitted a solicitor in 1881.

MR. H. E. TUDOR.

Mr. H. E. Tudor, retired solicitor, of Hastings, died as the result of an accident at Hastings on Saturday, 30th September. He was admitted a solicitor in 1885.

Societies.

Solicitors' Benevolent Association.

Mr. E. R. Cook, C.B.E., Chairman of the Board of Directors, presided at the Annual General Meeting of the Association, held at Oxford, on Wednesday morning, 27th September. In his address he spoke of the great access of interest that came to the Association through the Festival Dinner commemorating the seventy-fifth anniversary. Lord Riddell, he said, generously contributed £500 towards the Festival, and fifty distinguished representatives of provincial law societies were present. The report shows that the funds of the Association benefited by about £4,500, but an even more vital and creative result is the new scheme which the annual meeting passed to use the provincial law societies as a mechanism for furthering the objects of the Association. Sir Norman Hill, who moved the resolution, explained that the proposal was to create a council to assist, advise and help the Board in every possible way. Each local society or association will have the right to nominate one member. This power is permissive only. As a corollary, the meeting resolved to amend the regulations which hitherto have governed the local committees. Every provincial society representing a district in England or Wales, whose membership includes members of the Association, may select its own local committee to suggest measures for the Association's advancement and efficient working, to collect subscriptions, to enrol new members and to investigate applications. If a local committee wants to bring any matter before the Board, it can do so through the member of the Council nominated by its local society. Committees will be kept informed about the Board's work and the relief given in their area, and will in turn send monthly lists of new subscribers and members.

Sir REGINALD POOLE, seconding the resolution, which was carried unanimously without comment, gave Sir Norman Hill the whole credit for the idea. He also gave some stimulating advice to members in general. Earlier in the meeting Mr. N. T. Crombie, of York, had advised members to take their subscription books into court and ply their adversaries with demands to subscribe and join. Sir Reginald, going one better, advised every member facing his adversary for a settlement to decline obstinately to consider terms until the adversary produced a subscription.

The Chairman reported that the Association had granted about £14,000, all told, in relief, including £437 from Sir Cecil Coward's fund for assisting and educating children. The dividends on invested funds, he said, amounted to £6,280; these securities are actually more valuable than they were at purchase—a very good record for these times. Miss Passmore, the lady almoner, has now joined the Association for whole-time work, and her unique ability and training will be invaluable. The membership is 5,800, the highest figure the Association has ever reached, but Mr. Cook is not satisfied, and made a moving appeal to members to make the total 6,000 before he leaves the chair. Quoting the records of one particularly distressing case, he admitted how he had been personally touched by the necessity of the people whom the Association helped. He gave the exhortation which he never loses an opportunity of giving: "You owe everything to the profession; make its unfortunates' welfare your first charity."

Mr. C. G. MAY (London) proposing the customary vote of thanks to the Chairman, remarked that the resolution was quite inadequate; Mr. Cook had distinguished himself beyond almost any of his predecessors, for his work had produced one of the most advantageous reports and the best hope for the future that the Association had ever had.

Mr. H. WHITE (Winchester) reminded the meeting that Mr. Cook would go down to history as the man who cooked the £4,000 dinner and showed provincial members how the permanent directors worked.

Law Students' Debating Society.

AGENDA PAPER.

Tuesday, 10th October, 1933, at 7.30 p.m.—"That the case of *Cutler* v. *United Dairies (London), Ltd.* [1933] 2 K.B. 297, was wrongly decided" (Negligence—Attempt to hold bolting horse—Owner's knowledge of horse's vice—Plaintiff's own risk—Remoteness of damage—*Volenti non fit injuria*).

Tuesday, 17th October, 1933, at 7.30 p.m.—"That this House would welcome cannibalism as a solution of the unemployment problem."

Tuesday, 24th October, 1933, at 7.30 p.m.—"That this House deplores the decision of the Judicial Committee of the Privy Council in *Kossekechatko* v. *Attorney-General for Trinidad* [1932] A.C. 78" (Extradition—French Extradition Treaty, 1876—Absence of proof that crime committed in France—Irregularities in magistrate's order—Extradition Act, 1870).

Tuesday, 31st October, 1933, at 7.30 p.m.—"That in the opinion of this House the police are above reproach."

Ladies and gentlemen desirous of becoming members of the Society are requested to communicate with the Secretaries, Mr. P. H. North-Lewis, 22, Great St. Helens, E.C.3, and Mr. R. Langley Mitchell, 6, New-square, Lincoln's Inn, W.C.2. Barristers, solicitors, articled clerks to solicitors, clerks who have been articled to solicitors, members or students of an Inn of Court or University, and students enrolled under the Regulations dated 18th June, 1924, made under the Solicitors Act, 1922, are qualified for election.

University of London.

SESSION 1933–34.

FACULTY OF LAWS.

A course of sixteen public lectures on "Comparative Jurisprudence: Some Chapters in Modern Civil Law," will be given by Sir Maurice Sheldon Amos, K.B.E., M.A., K.C. (Quain Professor of Comparative Law), at University College, on Thursdays at 5.15 p.m.

First Term: Eight lectures, beginning 12th October.

Second Term: Eight lectures, beginning 11th January.

Syllabus.—These lectures will deal with fundamental concepts of civil law, treated comparatively, and will treat *inter alia* of: Acts in the law, the expression of will, mistake, fraud, duress, undue influence, impossibility, retro-activity, conditions, agency, "stipulation *pour autrui*," assignment of liabilities, abusive exercise of rights, juristic persons, property in movables and immovables, perpetuities, registration of title, successions *mortis causa*.

The lectures are open to the public without fee or ticket.

Professor Sir Maurice Amos will hold a Seminar on Comparative Jurisprudence on Wednesdays at 4.30 p.m., beginning 18th October. Particulars of fees for this and other courses in the Faculty of Laws may be obtained from Mr. C. O. G. Douie, Secretary, University College, Gower-street, W.C.1.

Legal Notes and News.

Honours and Appointments.

The King has been pleased to approve that Sir FRANK BOYD MERRIMAN, O.B.E., K.C., M.P., Solicitor-General, be appointed President of the Probate, Divorce and Admiralty Division of the High Court of Justice, in the place of The Rt. Hon. Lord Merrivale, who has resigned; that DONALD BRADLEY SOMERVELL, Esq., O.B.E., K.C., M.P., be appointed Solicitor-General, in succession to Sir Boyd Merriman; and that the honour of knighthood be conferred upon Mr. Somervell on his appointment.

The King has been pleased to approve that The Rt. Hon. CRAIGIE MASON AITCHISON, K.C., M.P., be appointed Lord Justice Clerk in succession to The Rt. Hon. Lord Alness, who has resigned; that WILFRED GUILD NORMAND, Esq., K.C., M.P., be appointed Lord Advocate in succession to Mr. Craigie Aitchison; and that DOUGLAS JAMIESON, Esq., K.C., M.P., be appointed Solicitor-General for Scotland in succession to Mr. W. G. Normand.

The King has been pleased, on the recommendation of the Secretary of State for Scotland, to make the following appointments, with effect as from the 1st October:—

Mr. DAVID ALEXANDER GUILD, Advocate, to be Sheriff Substitute of Lanarkshire at Airdrie, in place of Mr. Thomas David King Murray, K.C., resigned.

Mr. TOM ALEXANDER MENZIES, Advocate, presently Sheriff Substitute of Argyllshire at Oban, to be Sheriff Substitute of Ayrshire at Ayr, in place of Mr. JOHN RODGER HALDANE, Advocate, appointed to be Sheriff Substitute of Lanarkshire at Glasgow.

Mr. ARCHIBALD MCDONALD CHALMERS, solicitor, Glasgow, to be Sheriff Substitute of Argyllshire at Oban.

The King has been pleased to approve the appointment of The Rt. Hon. Sir WILLIAM ELLIS HUME-WILLIAMS, Bt., K.B.E., K.C., to be a Commissioner of Assize to go the Midland Circuit.

The Chancellor of the Duchy of Lancaster has appointed Mr. ROBERT PEEL, O.B.E., K.C., to be the Judge of the County Courts on Circuit No. 4, in the place of the late Judge Bradley.

The Chancellor has also appointed His Honour Judge Peel to sit in the Lancashire Chancery Court next week as deputy for the Vice-Chancellor of the County Palatine of Lancaster (Sir Courthope Wilson, K.C.), who is indisposed.

The Lord Chancellor has appointed Mr. ARNOLD DESQUESNES to be the Registrar of Rochdale and Salford County Court as from the 18th September.

The Lord Chancellor has appointed Mr. EDGAR STANBURY DOBELL to be the Registrar of Liskeard County Court as from the 1st October.

The Lord Chancellor has appointed Mr. ALEXANDER MATHESON to be the Registrar of Chester County Court as from the 1st October.

The Lord Chancellor has appointed Mr. ELIAS LOUIS JONES to be the Registrar of Wrexham and Mold County Court as from the 1st October.

Mr. FRANCIS MALAN, solicitor, Registrar of Ludlow County Court, has been appointed Registrar of Craven Arms County Court (Circuit No. 28). This court has been substituted for that previously held at Bishop's Castle, of which the Registrar, Mr. P. H. Newill, has resigned.

Mr. ROBERT BOOTH, solicitor, Deputy Town Clerk of Burnley, has been appointed Town Clerk of Gillingham, Kent, in succession to Mr. F. J. R. MOUNTAIN, who has been appointed Town Clerk of Bermondsey. Mr. Booth was admitted a solicitor in 1923.

Mr. GEORGE HERBERT SISMEY, solicitor, of Offord Cluny Manor, Huntingdonshire, and recently of 2 Pump-court, Temple, has been appointed Chairman of the Huntingdonshire Quarter Sessions in the place of Mr. George Fydell Rowley, resigned.

Professional Announcements.

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REGISTRATION OF DECONTROLLED HOUSES.

Our readers are reminded that dwelling-houses in Class C which have become de-controlled under the Rent and Mortgage Interest Restrictions Act, 1923, will again become controlled unless registered with the County Borough or County District by the 18th October. Registration after that date can only be effected on a certificate by the county court that there was reasonable excuse for the delay.

The houses affected are those of a maximum rateable value of £20 in London and £13 elsewhere, and the provisions of the 1933 Act with regard to their registration were dealt with in these columns, *ante*, p. 639.

CORONER FOR THIRTY-SIX YEARS.

Dr. Alexander Ambrose, who has been coroner for the South-East (Metropolitan) District of Essex for over thirty-six years, retired last Saturday. He has held more than 30,000 inquests, including many notable cases. After holding his last inquest he was presented with a case of pipes by his officers.

SIR MONTAGU COX'S RETIREMENT.

Sir Montagu Cox, Clerk to the L.C.C., retired last Saturday, after forty-one years' service in London local government. He has been presented with a gold cigar case by his colleagues.

Mr. T. Holland Crowther, who is retiring after acting as clerk at Oswestry County Court office for fifty years, has served under seven judges.

CENTRAL CRIMINAL COURT.

The ceremony of announcing the days appointed for holding the sessions for the jurisdiction of the Central Criminal Court for the ensuing year took place at a special session of the court, which was held last Monday.

The appointed days are as follows:—

1933.

Tuesday, 14th November. Tuesday, 5th December.

1934.

Tuesday, 9th January.	Tuesday, 29th May.
Tuesday, 30th January.	Tuesday, 26th June.
Tuesday, 27th February.	Tuesday, 17th July.
Tuesday, 20th March.	Tuesday, 11th September.
Tuesday, 17th April.	Tuesday, 16th October.

The next session of the Central Criminal Court begins on Tuesday, 17th October.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE.	EMERGENCY ROTA.	APPEAL COURT No. 1.	GROUP I. MR. JUSTICE EVE. Witness. Part II.	MR. JUSTICE MAUGHAM. Witness. Part I.
	Mr.	Mr.	Mr.	Mr.
Oct. 9	Jones	More	*Jones	*Hicks Beach
,, 10	Ritchie	Hicks Beach	Hicks Beach	*Blaker
,, 11	Blaker	Andrews	*Blaker	*Jones
,, 12	More	Jones	Jones	*Hicks Beach
,, 13	Hicks Beach	Ritchie	*Hicks Beach	Blaker
,, 14	Andrews	Blaker	Blaker	Jones

DATE.	GROUP I. MR. JUSTICE BENNETT. Non-Witness.	MR. JUSTICE CLAUSON. Witness. Part I.	GROUP II. MR. JUSTICE LUXMOORE. Non-Witness.	MR. JUSTICE FARWELL. Witness. Part II.
	Mr.	Mr.	Mr.	Mr.
Oct. 9	Blaker	*Ritchie	Andrews	More
,, 10	Jones	*Andrews	More	*Ritchie
,, 11	Hicks Beach	*More	Ritchie	Andrews
,, 12	Blaker	Ritchie	Andrews	*More
,, 13	Jones	*Andrews	More	Ritchie
,, 14	Hicks Beach	More	Ritchie	Andrews

*The Registrar will be in Chambers on these days, and also on the days when the Court is not sitting.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 12th October, 1933.

	Div. Months.	Middle Price 4 Oct. 1933.	Flat Interest Yield. £ s. d.	†Approximate Yield with redemption £ s. d.
ENGLISH GOVERNMENT SECURITIES				
Consols 4% 1957 or after	FA	109	3 13 5	3 8 7
Consols 2½%	JAJO	74	3 7 7	—
War Loan 3½% 1952 or after	JD	101¼	3 9 2	3 8 3
Funding 4% Loan 1960-90	MN	110¼xd	3 12 7	3 8 3
Victory 4% Loan Av. life 29 years	MS	109½	3 13 1	3 9 6
Conversion 5% Loan 1944-64	MN	117xd	4 5 6	3 3 0
Conversion 4½% Loan 1940-44	JJ	111½	4 0 9	2 10 11
Conversion 3½% Loan 1961 or after	AO	99¾	3 10 2	—
Conversion 3% Loan 1948-53	MS	98¾	3 0 9	3 1 9
Conversion 2½% Loan 1944-49	AO	94¼	2 13 0	2 19 7
Local Loans 3% Stock 1912 or after	JAJO	86¾	3 9 2	—
Bank Stock	AO	347½xd	3 9 1	—
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	77½	3 11 0	—
India 4½% 1950-55	MN	110½	4 1 5	3 13 3
India 3½% 1931 or after	JAJO	86½	4 0 11	—
India 3% 1948 or after	JAJO	74¼	4 0 9	—
Sudan 4½% 1939-73	FA	110	4 1 10	2 10 3
Sudan 4% 1974 Red. in part after 1950	MN	109	3 13 5	3 6 0
Transvaal Government 3% Guaranteed 1923-53 Average life 12 years	MN	100xd	3 0 0	3 0 0
COLONIAL SECURITIES				
*Australia (Commonw'th) 5% 1945-75	JJ	110	4 10 11	3 18 9
*Canada 3½% 1930-50	JJ	101	3 9 4	—
*Cape of Good Hope 3½% 1929-49	JJ	101	3 9 4	—
Natal 3% 1929-49	JJ	95	3 3 2	3 8 7
New South Wales 3½% 1930-50	JJ	98	3 11 5	3 13 2
*New South Wales 5% 1945-65	JD	109	4 11 9	4 0 9
*New Zealand 4½% 1948-58	MS	107	4 4 1	3 16 10
*New Zealand 5% 1946	JJ	110	4 10 11	3 18 9
*Queensland 4% 1940-50	AO	102	3 18 5	3 13 5
*South Africa 5% 1945-75	JJ	113	4 8 6	3 12 9
*South Australia 5% 1945-75	JJ	110	4 10 11	3 18 9
*Tasmania 3½% 1920-40	JJ	100	3 10 0	3 10 0
Victoria 3½% 1929-49	AO	97	3 12 2	3 15 0
*W. Australia 4% 1942-62	JJ	102	3 18 5	3 14 2
CORPORATION STOCKS				
Birmingham 3% 1947 or after	JJ	85	3 10 7	—
*Birmingham 4½% 1948-68	AO	112	4 0 4	3 9 3
*Cardiff 5% 1945-65	MS	109	4 11 9	4 0 9
Croydon 3% 1940-60	AO	92	3 5 3	3 9 6
*Hastings 5% 1947-67	AO	113	4 8 6	3 14 4
Hull 3½% 1925-55	FA	99	3 10 8	3 11 4
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	99	3 10 8	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	72½	3 9 0	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	86½	3 9 4	—
Manchester 3% 1941 or after	FA	85	3 10 7	—
Metropolitan Consd. 2½% 1920-49	MJSD	93½	2 13 6	3 0 5
Metropolitan Water Board 3% "A" 1963-2003	AO	87	3 9 0	3 10 1
Do. do. 3% "B" 1934-2003	MS	88	3 8 2	3 9 1
Do. do. 3% "E" 1953-73	JJ	95	3 3 2	3 4 6
*Middlesex C.C. 3½% 1927-47	FA	101	3 9 4	—
Do. do. 4½% 1950-70	MN	112xd	4 0 4	3 11 0
Nottingham 3% Irredeemable	MN	85xd	3 10 7	—
*Stockton 5% 1946-66	JJ	112	4 9 3	3 16 2
ENGLISH RAILWAY PRIOR CHARGES				
Gt. Western Rly. 4% Debenture	JJ	103	3 17 8	—
Gt. Western Rly. 5% Rent Charge	FA	118½	4 4 5	—
Gt. Western Rly. 5% Preference	MA	105½	4 14 9	—
‡L. & N.E. Rly. 4% Debenture	JJ	98	4 1 8	—
‡L. & N.E. Rly. 4% 1st Guaranteed	FA	89	4 9 11	—
‡L. Mid. & Scot. Rly. 4% Debenture	JJ	100½	3 19 7	—
‡L. Mid. & Scot. Rly. 4% Guaranteed	MA	94½	4 4 8	—
Southern Rly. 4% Debenture	JJ	104	3 16 11	—
Southern Rly. 5% Guaranteed	MA	114½	4 7 4	—
Southern Rly. 5% Preference	MA	105½	4 14 9	—

* Not available to Trustees over par.

† In the case of Stocks at a premium, the yield with redemption has been calculated as at the earliest date; in the case of other Stocks, as at the latest date.

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(LONDON BRIDGE, S.E.1)

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Founded in 1725 by Thomas Guy, a Bookseller and Publisher in the City of London. Incorporated and Governed by Acts of Parliament 11th George I, ch. xii, and 61st Victoria, ch. vi, as "The President and Governors of the Hospital founded at the sole costs and charges of Thomas Guy, Esquire."

NUMBER of BEDS and COTS, 648

(Including 31 Cubicles for Paying Patients.)

Over and above the income from its endowments, the Hospital is dependent upon support from other sources for general purposes to the extent of over

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A copy of the Annual Report of the Hospital will be sent, together with any further particulars required, on application to the Clerk, Counting House, Guy's Hospital, London Bridge, S.E.1.

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